TRANSCRIPT OF RECORD

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 490

SOUTHERN PACIFIC RAILROAD COMPANY et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

VOL. IV.

(Pages 1477 to 2354, inclusive.)

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

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Filmer Brothers Co. Print, 424 Sansome St., S. F.

Section VI.

During the present year and until the third Monday of May, 1872, the executive committee shall have power to add to or amend these laws, and to make such rules and regulations and appoint such counsel, attorneys, clerks or assistants as may be necessary, reporting the same for approval at each stated meeting of the board of directors, which, if not sanctioned by the board, shall be no longer binding.

Section VII.

Every director shall at all times have free access to every book and record of the company.

Section VIII.

Certificates of stock shall be issued to the stockholders, and transfers of them made when required; said certificates to be signed by the president (or by the vice-president) after they shall have been signed by the treasurer and authenticated by the seal of the company, and countersigned by the secretary as register, and when transfers are made the certificates shall be signed by the transfer clerk also.

Any person or persons claiming a certificate or evidence of stock to be issued in lieu of one lost or destroyed shall advertise the same in one or more newspapers in the city of New York twice a week for four weeks, giving the number and date of the certificate lost and the number of shares it represents. The party shall then furnish the board of directors with the affidavit or affirmation describing the certificate and its loss, accompanied by a copy of the advertisement, and also a bond

of indemnity with satisfactory personal security in at least double the amount of the certificate against any damage that may arise from the issuing of a new certificate; whereupon the board may direct the president and treasurer, one month after the date of the appearance of the last advertisement, to issue a new certificate of the same tenor with the one alleged to be lost or destroyed, therein specifying that it is in lieu thereof.

Section VIII amended meeting of executive committee, July 21, 1871, to read as follows: "Certificates of stock shall be issued to stockholders, and transfers of them made when required, said certificates to be signed by the president (or by the vice-president) after they shall have been signed by the secretary, and authenticated by the seal of the company, and when transfers are made, the certificates shall be countersigned by the transfer clerk, also as register."

Section IX.

The president or executive committee may call a general meeting of the stockholders at any time upon giving due notice; and the president shall, upon request in writing signed by the stockholders having a majority of the stock, call a general meeting of the stockholders.

[Endorsed]: Copy of by-laws Texas and Pacific Ry. Co., adopted at meeting of directors, May 24, 1871. C.

(Copy)

Office of the Chief Engineer,

Marshall, Texas, March 12, 1873.

Hon. Thomas A. Scott, President.

Dear Sir: I have the honor to submit a preliminary report upon the surveys on the California Division between San Diego and Colorado river, with a view of determining the route for adoption over that division.

The full report of all the surveys, with maps, profiles, etc., will be made up by Mr. Evans hereafter, but from data forwarded to me by him I am able to place before the board sufficient information for them to determine upon the general route from San Diego east.

The lines examined are as follows:

The direct line from San Diego to Ft. Yuma, known as the Otay Valley line, 203.11-100 miles long.

The San Gorgonio Pass lines, numbered 1 to 4, marked main line and A, B, C, D, on maps.

No. 1, main line, 313 miles long.

No. 2, the coast line, via Temecula creek to the main line, thence by main line to the pass 308.73 miles.

No. 3, the coast line to Temecula; thence the main line to Laguna; thence up the San Jacinto river and San Bernardino, 302 miles.

No. 4, the coast line; thence Temecula creek; thence line "D" direct to San Gorgonio Pass, 270 miles.

Warner's Pass line was not examined, our reconnoisance of it showing that it was impracticable as compared with other lines. The prominent features of each line are, first:

Direct line crosses a barren, uninviting country, hanging to steep and perpendicular slopes, stubborn to overcome and crossing valleys and ravines hundreds of feet high, passing the summit of the Sierra Nevadas at Walker's Summit; thence down Carissa Canyon to the desert, and thence to the Colorado at Fort Yuma. As an evidence of the character of the Carissa Canyon on the direct line, 7½ miles of that work is estimated to cost $240,000 per mile.

The Carissa Canyon is reported as very heavy work, the crossing of the streams and ravines requiring nearly 7,000,000 feet of timber and 600 feet Howe Truss bridging which must be built, as earth excavation cannot be found to fill the chasms. It also has eleven tunnels in eleven miles.

It has 57.18-100 miles from 80 to 116 ft. maximum grade and 11.61-100 miles of 116 ft. grade.

The ascent and descent to this line is 9,032 feet. After reaching the desert, lines cross the sand hills composed of shifting sand, often changing miles in a single season. It is considered that if we take this route we will have to avoid these hills, either by the south, which would take us into Mexico, or by the north, which would increase the distance some 18 miles. The distance upon the line as surveyed is 302.11-100 miles. Locally, this is the line that is most desired by the people of San Diego. It is the shortest line on the surface and would have the least mileage to operate. It strikes the bay of San Diego direct from the east, and would be the shortest line across the continent; but equated and reduced

to level grade and compared with San Gorgonio Pass lines it is the longest line from Fort Yuma to San Diego. The estimates upon it have been made as closely as practicable, considering the nature of the country. It is impossible upon such grade to cover all contingencies, but estimates have been made as grades show on profile.

Mr. Evans thinks that his estimate covers the cost of the line. Upon the location of this line it is my opinion if we are forced to keep clear of the sand hills the distance will be increased to 220 miles.

In competition with this line we have the lines known as the San Gorgonio Pass lines, two of which are distinct lines to San Gorgonio Pass; the others being parts of each of those lines. They are known as the main line and coast line. From San Gorgonio Pass to Fort Yuma all are a common line.

No. 1. The main line commences at San Diego, follows a short distance up the San Diego river, thence across the drainage of the country to Temecula creek, thence by Temecula and La Laguna to the Rio De Santa Ana, and up that stream to the San Bernardino Valley; thence to San Gorgonio Pass. This is the longest of all the San Gorgonio Pass lines, and has the greatest ascent and descent obtaining it in crossing the drainage from San Diego to Temecula, and will not, as a whole, come into comparison with some of the other lines. That portion of it from Temecula to the Santa Ana river, and thence by San Bernardino and San Gorgonio Pass, including a connection with Los Angeles, gives us the best connection north. This line is 313 miles long.

No. 4. The next line known as the coast line, and numbered 4, follows the coast from San Diego to the mouth of Temecula creek; thence up Temecula creek to Temecula; thence by line "D" direct to San Gorgonio Pass. This line is the shortest of the San Gorgonio Pass lines, and, as I calculate, the cost is the cheapest, though Mr. Evans makes the construction of it proper cost a little more than line 3.

This line is the proper line to adopt from San Diego to Temecula, provided the San Gorgonio Pass route is taken. From Temecula to the San Gorgonio Pass we have examined 4 lines and the examination reduces us to the choice of two.

This direct coast line has an elevation and depression of 8,133 feet; has 28.44-100 miles maximum grade 80 to 105 feet. It is least in curvature, and in a solely engineering point of view is the best of all the lines examined. When equated to a level grade it is 50 miles shorter than Otay Valley direct line.

No. 3 line is the same as the coast line to Temecula; thence runs by La Laguna; thence by San Jacinto river by line "B" to Riverside and San Bernardino; thence San Gorgonio Pass 302.22-100 miles.

The great difficulty of overcoming the country between La Laguna and the San Jacinto and up that river throws it out of the comparison. It is mentioned here for the

purpose of showing that we have thoroughly examined that country.

Line No. 2 is the same as the coast line to Temecula; thence the same as the main line to San Gorgonio Pass, passing the La Laguna to the Rio de Santa Ana, through San Bernardino to the pass. By examining the tables of cost, grades and distances, you will see that the decision upon the lines lies between this line and line "D," and the direct line by the Otay Valley.

If we aim for a connection with Los Angeles this line will give it to us better than line "D." If we regard Los Angeles and Temecula as fixed points the distances would compare as follows:

Temecula to the pass line "D"	40 miles
Los Angeles to San Bernardino	54 miles
San Bernardino to pass	18 miles
Total	112 miles

This is with a view of taking the produce of Los Angeles to San Diego, and it would run from Los Angeles to San Bernardino, then to San Gorgonio Pass, thence down line "D" to San Diego.

From Temecula to Los Angeles, via main line,	74 m.
Temecula to Temecula Pass	44 m.
Total	118

Making it six miles longer. To overcome this six miles we make the elevation to San Gorgonio Pass on this line but once, while on line "D" it is made twice; it would have to be done on both lines, provided the intersections were made at the summit instead of at Temecula. I submit tables of grades and of the cost of the lines as obtained from the estimates of Mr. Evans.

Description of Line.	Level miles	10 to 20 per mi	
		Fact.	
Otay Valley Line	44.39	35.29	12.
Gorgonio Pass Lines			
(1) Via the Interior, Viz San Diego River Crossing, Drainage Temecula, Temescal, &c			
(2) Via the Coast to Temecula, and thence same line (1)			
(3) Same as above to Laguna, thence up San Jacinto River to Riverside			
(4) Direct Line Via Coast to Temecula and direct to Pass	41.02	63.26	43.

TABLE OF GRADES.

...on of Line.	Level Miles	10 to 20 ft per mile. Asct.	10 to 20 ft per mile. Dest.	20 to 40 ft. per mile. Asct.	20 to 40 ft. per mile. Dest.	40 to 60 ft. per mile. Asct.	40 to 60 ft. per mile. Dest.	60 to 80 ft. per mile. Asct.	60 to 80 ft. per mile. Dest.	80 to 105 ft. per mile. Asct.	80 to 105 ft. per mile. Dest.	maximum 116. Asct	maximum 116. Dest.	Total Asct. in feet.	Total Desct. in feet.	Total Miles.
...e	44.39	35.29	12.39	14.21	8.28	9.67	2.02	6.36	13.32	16.86	28.64	11.68		4580.8	4452.4	203 11/100
Pass Lines																
...erior, Viz San Diego River.																
Drainage Temecula.																
...&c														5926.49	5802.19	313 95/100
...t to Temecula, and														4778.65	4674.05	308 73/100
...ne Line (1)																
...bove to Laguna, thence up														4724.8	4664.0	302 22/100
...to River to Riverside																
Via Coast to Temecula																
...t to Pass	41.02	63.26	43.65	32.27	20.30	10.20	13.85	7.73	9.62	13.79	14.65			4138.7	3995.9	270 34/100

No. of Sections	Description of Line	EARTH EXCAVATION	SOLID ROCK	LOOSE ROCK	TUNNELING	1ST CLASS MASONRY	2ND CLASS MASONRY	TRUSS BRIDGING	PILING
		Cubic Yards	Cubic Yards	Cubic Yards	Cubic Yards	Cubic Yards	Cubic Yards	Lineal feet	Lineal feet
	OTAY VALLEY LINE								
	From Depot Grounds San Diego to Crossing of Colorado River at Yuma								
1.	From Depot Grounds to Sta. 908+70	541.464	53.000	53.000	17.500		525		40.284
2.	" 908+70 to 4300 in Carisso Canon	2970.736	2.127.903	943.820	116.741	6,156	21,830	600	
3.	" Sta. 4300 in C. Canon to Sta. 5300 on Desert.	1,339.850		96.073		,692	5,092		
4.	" " 5300 to Sta. 9302 at Fort Yuma	1.094.215					,062		8.376
	- 4 -								
	COAST LINE								
1.	From depot grounds San Diego to head Temecula Canon	1.812.195	165689		8,122	2.900	2,932	2,250	77.714
2.	" head of Temecula Canon to San Gorgonio Pass.	839. 381	191.939	95.968	6,498	2,724	2,574	350	
3.	" San Gorgonio Pass to Ft Yuma	880,598	21,000	51,000			1,320		53. 650
	- 1 -								
	MAIN LINE								
1.	From Depot grounds at San Diego to Sta. 600 near Old S.D. diverging point of Shore Line	26,112							504
2.	From Sta 600 to the San Luis Rey Valley	1154.187	201,354	210,558	14.040		3,000		4.664
3.	" Valley of St. Luis Rey to Earles Ranch Temecula plains.	396,580	221,139	110,568	2,160		1,922		
4.	" Earles Ranch to Laguna div'g pt. of San Valley line.	83,099							728
5.	" Laguna to Gorgonio Pass via Temescal Cr. & Riverside	420,000		95.665		Rip	345		2,400
6.	" Gorgonio Pass to Fort Yuma.	880, 598	21,000	51,000		Rap 4,800	1,320		53, 650
	- 2 -								
	Via the coast to Temecula and thence Same as Line 1								
	- 3 -								
	Same as above to the Laguna thence up San Jacinto river to Riverside								

ESTIMATES

ER IN TLE	SLOPE WALL	WROUGHT IRON	CAST IRON	SUPERSTRUCTURE IRON TIES TRACK laying & telegraph	No. OF MILES	TOTAL COST CONSTRUCTION	COST PER MILE	MACHINERY ROLLING STOCK &c	BUILDINGS SHOPS AND WATER SUPPLIES	RIGHT OF WAY GENERAL EXPENSES & CHARTER PRIVILEGES.	ENGINEERING CONTINGENCIES &c
B. M.	Cubic Yards	Pounds.	Pounds	$13000 per mile	------	----------	----------	$4000 per mile.	$1500 per mile	$500 PER MILE	$1000 per mile
9.574		28,070	19,746	$ 348,400.00	26 8/10	$ 1,023,899.15	41,349.97	107,200.00	40,200.00	13,400.00	26,800.00
5.967		111,892	154,012	1,060,410.00	81 87/100	9,280,837.30	113,789.82	326,280.00	122,355.00	40,785.00	81,570.00
2,228		18,106	22,722	246,220.00	18 94/100	844,134.76	44,568.88	75,760.00	28,410.00	9,470.00	18,940.00
5,676		10,888	5,098	985,400.00	75 8/10	1,292,835.75	17,056.00	303,200.00	113,700.00	37,900.00	75,800.00
				$ 2,640,430.00	203 11/100	$12,441,706.96	$ 61,256.00	$812,440.00	$304,665.00	$101,555.00	$203,110.00
6,908	15,000	74,749	46,434	872,040.00	67 68/100	2,249,872.52	33,540.00	268,320.00	100,620.00	33,540,00	67,080.00
4.000		24,623	17,660	519,740.00	39 98/100	1,443,178.65	36,098.00	159,920.00	59,970.00	19,990,00	39,980.00
8,078	4,800	20,810	9,845	2,122,640.00	163 28/100	2,604,821.56	15,953.00	653,120.00	244,920.00	81,640,00	163,280.00
				$ 3,514,420.00	270 34/100	$6,297,872.73	$ 23,296.00	$1,081,360.00	$405,510.00	$135,170.00	$270,340.00
2,750		,500	264	34,320.00	2 64/100	43,614.22	16,520.00	10,560.00	3,960.00	1,320.00	2,640.00
5,529		26,449	30,170	659,880.00	50 76/100	1,883,745.45	37,110.00	203,040.00	76,140.00	25,380.00	50,760.00
7,594	15,000	14,672	15,923	297,700.00	22 9/10	1,146,780.74	50,077.00	91,600.00	34,350.00	11,450.00	22,900.00
4,618		1,870	720	156,910.00	12 3/100	183,540.02	15,206.00	48,280.00	18,105.00	6,035.00	12,070.00
2,640		12,542	8,092	809,900.00	62 3/10	1,067,914.96	17,141.00	249,200.00	93,450.00	31,150.00	62,300.00
8,078		20,810	9,845	2,122,640.00	163 28/100	2,604,821.56	15,953.00	653,120.00	244,920.00	81,640.00	163,280.00
				$ 4,081,350.00	313 95/100	$6,930,416.95	$ 22,075.00	$1,255,800.00	$470,925.00	$156,975.00	$313,950.00
					308 73/100	$6,050,069.50	$ 19,596.00	$1,235,000.00	$463,125.00	$154,375.00	$308,750.00
					302 22/100	$6,438,769.72	$ 21,305.00	$1,208,880.00	$453,330.00	$151,110.00	$302,220.00

	Superstructure Iron Ties Track laying & telegraph	No. of Miles	Total Cost Construction	Cost per Mile	Machinery Rolling Stock &c	Buildings Shops and Water Supplies	Right of Way General Expenses & Charter Privileges.	Engineering Contingencies &c	Total Cost per Mile	Total Cost
s	$3000 per mile	------	----------	----------	$4000 per mile.	$1500 per mile	$500 per mile	$1000 per mile	----------	----------
46	$ 348,400.00	26 8/10	$ 1,023,899.15	41,349.97	107,200.00	40,200.00	13,400.00	26,800.00	48,349.97	1,211,499.15
12	1,060,410.00	81 51/100	9,280,827.30	113,789.82	326,280.00	122,355.00	40,785.00	81,570.00	120,789.82	9,851,827.30
22	246,220.00	18 22/100	844,134.76	44,568.88	75,760.00	28,410.00	9,470.00	18,940.00	51,568.88	976,714.76
98	985,400.00	75 8/10	1,292835.75	17,056.00	303,200.00	113,700.00	37,900.00	75,800.00	24,056.00	1,823,435.75
	$ 2,640,430.00	203 11/100	$ 12,441,706.96	$ 61,256.00	$ 812,440.00	$ 304,665.00	$ 101,555.00	$ 203,110.00	$ 68,256.00	$ 13,863,476.96
34	872,040.00	67 28/100	2,219,872.52	33,540.00	268,820.00	100,620.00	33,540,00	67,080.00	40,540.00	2,719,432.52
60	519,740.00	39 88/100	1,443,178.65	36,098.00	159,920.00	59,970.00	19,990,00	39,980.00	43,098.00	1,723,038.65
45	2,122,640.00	163 28/100	2,604,821.56	15,953.00	653,120.00	244,920.00	81,640,00	163,280.00	22,953.00	3,747,781.56
	$ 3,514,420.00	270 84/100	$ 6,297,872.73	$ 23,296.00	$ 1,081,360.00	$ 405,510.00	$ 135,170,00	$ 270,340.00	$ 30,296.00	$ 8,190,252.73
64	34,320.00	2 64/100	43,614.22	16,520.00	10,560.00	3,960.00	1,320.00	2,640.00	23,520.00	62,094.22
76	659,880.00	50 76/100	1,883,745.45	37,110.00	203,040.00	76,140.00	25,380.00	50,760.00	44,110.00	2,239,065.45
23	297,700.00	22 9/10	1,146,780.74	50,077.00	91,600.00	34,350.00	11,450.00	22,900.00	57,077.00	1,307,080.74
20	156,910.00	12 7/100	183,540.02	15,206.00	48,280.00	18,105.00	6,035.00	12,070.00	22,206.00	268,030.02
92	809,900.00	62 3/10	1,067,914.96	17,141.00	249,200.00	93,450.00	31,150.00	62,300.00	24,141.00	1,504,014.96
45	2,122,640.00	168 28/100	2,604,821.56	15,953.00	653,120.00	244,920.00	81,640.00	163,280.00	22,953.00	3,747,781.56
	$ 4,081,350.00	313 95/100	$ 6,930,416.95	$ 22,075.00	$ 1,255,800.00	$ 470,925.00	$ 156,975.00	$ 313,950.00	$ 29,075.00	$ 9,128,066.95
		308 79/100	$ 6,050,069.50	$ 19,596.00	$ 1,235,000.00	$ 463,125.00	$ 154,375.00	$ 308,750,00	$ 26,596.00	$ 8,211,319.50
		302 22/100	$ 6,438,769.72	$ 21,305.00	$ 1,208,880.00	$ 453,330.00	$ 151,110.00	$ 302,220.00	$ 28,305.00	$ 8,554,309,72

These estimates are made with cuts of 16 feet base, and banks of 12 feet upon the direct line cuts go into fills sufficient in depth to make the posts of the trestling crossing the ravines not to exceed 100 feet in length.

It is difficult to classify the work on the direct line or to determine what quantities will have to be moved—and especially is this the case in Carissa canyon, the slopes of which are nearly perpendicular; five-tenths of the tunneling also occurs in this canyon within a distance of ten miles.

Upon the other lines the country is such that the estimates can be made very closely, and I have no doubt that they are as nearly correct as estimates upon preliminary lines are generally made. Mr. Evans thinks that upon these lines he has given a full estimate of their cost. The prices that have been affixed are for earth excavations, 28 to 33 cents per cubic yard; solid rock, $1.75 to $2.25; loose rock, $1.00; tunneling, $12 to $14 per cubic yard; first-class masonry, $20; second-class masonry, $10 to 12 dollars; timber for trestles, $50 per M. B. M.; piling, 50 cents per lineal foot; wrought iron, 10c per pound; cast iron, 8c per pound; truss bridging, 38c per running foot; superstructure, including ties, iron, track laying, etc., $13,000 per mile.

In examining this data it is evident that we are brought down to the selection of one of three lines, viz., the direct line through Otay Valley or coast line, thence via San Bernardino or by line "D." A comparison of these lines is made by Mr. Evans as follows: You will

observe that he estimates only the cost of construction of the line, while my estimates which precede this give the lines completed ready for business.

Report of J. A. Evans.

Recapitulation of the Cost of the Several Lines, from San Diego, Cal., to Fort Yuma.

Description of Line.	Distance Miles.	Elevation Feet.	Depression Feet.	Total Cost.	Cost per mile.
Otay Valley Line.....	203.11	4580.8	4452.1	$12,441,706.97	$61,256.00
Gorgonio Pass Lines:					
(1) Via the Interior, viz., San Diego, R. Cross'g drainage Temecula, Temescal, etc.....	313.95	5926.49	5802.11	6,930,416.95	22,075.00
(2) Via the coast to Temecula, and thence same as line 1.....	308.73	4778.65	4674.05	6,050,069.50	19,596.00
(3) Same as the above to the Laguana, thence up San Jacinto River to Riverside	302.22	4724.8	4664.0	6,438,769.72	21,305.00
(4) Direct Line via Coast to Temecula, and direct to Pass.	270.34	4138.7	3995.9	3,297,872.73	23,296.00

The maximum grade on the Otay Valley line is 116′ per mile. On several lines to the Gorgonio Pass the maximum is 105.6 per mile. If we compare the several lines leading to San Gorgonio we can throw out line

(1) with its distance of 313.95 miles, because of the large amount of elevation and depression on it, and its additional cost chiefly covered by its additional length.

We can also throw out line (3) via the San Jacinto Valley, which although saving 6.51 miles in distance over line (2), is, in consequence of its grades, practically the longest line, and then it costs $388,700 more.

The comparison will then be between lines (2) and (4), one of which is 308.93 miles, costing $19,596.00 per mile, and the other 270.34 miles, costing $23,296.00 per mile.

By equating grades on both lines and reducing them to straight lines of level grades the result is (independent of curvature), for the direct line to the pass (No. 4) 872.82 miles; line via Temescal and Riverside (No. 2) 934.41 miles; or 7 per cent nearly in favor of the shortest line, which is obtained at an additional cost of $247,803.23.

The line (No. 2) has some advantages over the short line in the fact that it passes up the Santa Ana river (a country susceptible of development) and passes through or near the San Bernardino Valley, and commercially is the best line. As this is not an engineering question, I barely refer to it. Comparing our shortest line with the Otay Valley line, we find:

203.11 of Otay Valley line, costing.....	$12,441,706.97
270.34 direct line to San Gorgonio (4).....	6,297,872.73
Bal. against Otay Valley Line.....	$ 6,143,834.24

By equating grades and curvatures we find the equivalent length of straight level line to be, on Otay Valley

line, 929 miles; on San Gorgonio Pass line, 879 miles, or 5 7-10 per cent in favor of Gorgonio Pass line; this is caused in a measure by the additional elevation and deflection of the Otay Valley line, but more by the excessive curvature, for on the Gorgonia Pass line the total deflection is 6,354 degrees, whereas on the Otay Valley line we have 17,864 degrees.

With reference to the estimates of the several lines I would say that the northern lines, cheap as they appear to be, can with the mode of construction adopted in estimating of all the lines (including Otay Valley), viz., the trestling of heavy fills, be brought within the figures.

On the Otay Valley line, in consequence of the difficulty of classifying the material, it is questionable if it can be done. The method pursued has been this—all excavations from where we strike the rock country to the desert has been called 25 per cent earth, 25 per cent loose rock, and 50 per cent solid rock, which may not be very far from correct, but I have assumed that all borrowed material would be earth. I question if we can get the large amount required. With reference to distance we can save on the Gorgonio Pass line two miles, making it 268 miles instead of 270, and likewise 100′ in the elevation of the summit—both of which were lost by running to a connection.

The Otay Valley line, if we were forced to build, would be increased in distance 18 miles to avoid the sand hills of the desert.

If, as is more than likely, we find our best crossing of the Colorado some 25 miles above Fort Yuma, additional

distance would be saved there by taking the northern line.

You will see that $13,000 per mile has been added to all lines for superstructure and laying track. Nothing has been added for buildings, superintendence or engineering. I think it a matter for congratulation that we can get away from here so easily.

(Signed) JAS. A. EVANS,
Div. Eng.

When we reduce the two general routes, viz., the direct lines or San Gorgonio Pass line to a level grade, giving to each equal capacity for business, the San Gorgonio Pass line is the shortest, has less curvature and less ascent and descent. The distance by the San Gorgonio Pass line can be materially decreased by crossing the Colorado river 25 miles north of Fort Yuma, crossing the Gila at the foot of the mountains some distance from its mouth. By this line we will also avoid the sand hills that are so objectionable upon the direct line. The two general routes compare as follows: Difference in cost favor of San Gorgonio, the coast line, $5,673,224.23, per mile, $37,960—898.3 feet in ascent and descent saves 28 74-100 miles of maximum grade.

In August, when in San Diego, I examined with Mr. Evans a portion of the direct line. As I then stated to a portion of the board, my personal examination of the country determined me to seek a passage through the mountains further north. I was convinced that if we were forced to build the direct line, the obstacles to over-

come were far greater than a mere survey would determine. I, however, instructed Mr. Evans to exhaust the question of the practicability of the direct line, and give us the lowest estimate of the cost of the best line to be found in that direction, and also to give the country a thorough examination from San Gorgonio Pass to the Jacumba, and also to examine the country south in Mexico and determine if there was anything there.

A reconnoisance of the country south of the boundary determined that there was nothing there as feasible as north of it; that was within our reach. The face of the country indicated to me that the lines toward the San Gorgonio Pass would show a much better route than had ever been found by surveys heretofore made in that direction, and the results of Mr. Evans' sureys bear out that opinion.

A comparison of the two lines that come into competition in the San Gorgonia Pass lines, numbered 2 and 4, are as follows: Distance in favor of the direct line "D," 38.39 miles; total cost, $2,166.77 in favor of line "D." Line 2, main line of the San Bernardino line, costs $4,700 per mile less than line "D," although its total cost is more.

If we make our selection of the two lines running through San Gorgonio Pass upon a purely engineering basis, the coast line and line "D" are preferable, but if we consider them in relation to a connection at Los Angeles and San Francisco, it is a question if the coast line to Temecula and the main line, via Temecula and San Bernardino, is not the best. If we go to San Francisco we save by

either of these lines between Fort Yuma and San Francisco nearly 100 miles in distance over the direct line Fort Yuma to San Diego. It is said the conformation of the country is such that we are obliged to seek a connection with San Francisco through Los Angeles or the valley near it; that the direct line from San Gorgonio Pass and through Cajon Pass, thence to the Tehachapi, thence by the route of the Southern Pacific Road, is impracticable. This is the opinion given me by the engineers upon the Southern Pacific Road who have examined the Cajon Pass. I have never examined it, but it is by far the shortest route to San Francisco.

This Cajon Pass route, if adopted, would necessitate, if we intend to control the business of Los Angeles and Santa Barbara counties, an independent line to Los Angeles.

If we take the longer line by Los Angeles to San Francisco, we will command the coast country by the main line.

I am also of opinion that if the San Gorgonio Pass line is adopted we can better control the railroad project of Southern California than we could if we built the direct Otay Valley line. If we build the north line, no other line will be built to Fort Yuma or Los Angeles from San Francisco. If we build the direct line the Southern Pacific or the extension of the Atlantic and Pacific will be very apt to seek a connection with us at Fort Yuma or such point as we may cross the Colorado instead of at San Diego.

I am also confident that either of the San Gorgonio Pass lines will control for all time the business of Southern California. If the company have in view the control of the Southern Pacific Railroad of California, there is no question but that we should take one of the two San Gorgonio Pass lines, probably the direct line, as the line from San Gorgonio to a connection with the Southern Pacific at Los Angeles would accomplish all that a longer line would do, and at the same time give us the shortest route across the continent.

Another point that strongly recommends to me the San Gorgonio Pass lines is the fact that by this line we can with a small expenditure of money comply with the law compelling us to build from San Diego east, whereas by the direct line, after the first 10 or 20 miles are built, we immediately encounter the heavy work of the Sierra Nevadas, which will run the cost of the road up to from $100,000 to $200,000 per mile, and we would have a road lying idle that could do no business until it reaches the desert.

While by the San Gorgonio Pass lines as soon as we build northeast twenty-five miles we will have a fair business from the back countries along the coast and from Los Angeles seeking San Diego as a harbor.

I would therefore recommend to the company that for the present they determine between the two general routes, the direct line and the San Gorgonio Pass line. If the San Gorgonio Pass line is determined, we can locate that line up the coast to Temecula and for the present the decision of the line between Temecula and San

Gorgonio Pass be postponed and hereafter decided as matters may develop in California.

The coast line from San Diego to the mouth of Temecula creek and up Temecula creek is common to either of the San Gorgonio Pass lines. The work on this portion of the road is light, and we can complete the amount that the law requires this year without any great expenditure.

I have instructed my engineers to commence location upon this line, awaiting the decision of the company, but with a full understanding that it is not under any circumstances to be considered the adopted line.

If the company does not desire to make known their determination in this matter for the present, I will locate it to Temecula and wait for further instruction. If no instructions are given me, I shall consider that my instructions to the engineers meet the approval of the board.

I enclose herewith tracing showing the San Gorgonio Pass lines; also a map showing all the lines.

I am,

Very respectfully,

(Signed) G. M. DODGE,
Chief Engr.

[Endorsed]: Copy. Report of Genl. Dodge, March 12, 1873. Upon the surveys from San Diego with a view of determining the route for adoption. Opened and filed Mar. 29, 1899. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY, Defendants.

No. 587.

Partial Report of Special Examiner in Chancery.

To the Honorable, the Judges of the Circuit Court of the United States in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause as of the 23d day of January, 1895, whereby it is ordered that the undersigned, as special examiner in chancery, shall take the evidence in the above-entitled cause and report the same to the Court, the said special examiner does now submit this his partial report, as follows:

That on the 8th day of February, 1895, the complainant appeared at the office of the clerk of the United

States Circuit Court, in the city of Los Angeles, California, by its solicitor, Joseph H. Call, Esquire, and the defendants by their solicitor, Joseph D. Redding, Esquire; and thereupon the complainant produced as a witness upon its behalf Charles A. Shaw, and introduced in evidence exhibits numbered Plaintiffs' Exhibits 1 to 13, inclusive. And thereupon the further taking of testimony was adjourned to be resumed upon further notice and consent of counsel.

That on the 18th day of October, 1895, the complainant appeared at the office of the clerk of the United States Circuit Court, in the city of Los Angeles, California, by its solicitor, Joseph H. Call, Esquire, and the defendants by their solicitor, William Singer, Jr., Esquire, and it was thereupon stipulated that defendants should have to and including October 19th, 1895, in which to complete the taking of their testimony. That on said 18th and 19th days of October, 1895, the defendants introduced in evidence exhibits numbered Defendants' Exhibits 9A and 9B; also, numbers 29 to 43, inclusive. And thereupon the further taking of testimony herein was adjourned to be resumed upon further notice and consent of counsel.

That the undersigned submits this partial report for the purpose of returning to the Court the exhibits introduced in evidence before him, in order that the clerk of said court may perform the conditions of the stipulation appearing at page 36 of said record and the provisions of said stipulation be carried into effect.

And the said record, accompanying this report, contains all of the evidence and exhibits introduced in said

cause by the respective parties, together with the stipulation entered into, before me as special examiner, to the date of this report; all of which, with the exhibits introduced, is herewith returned to the Court.

November 15, 1895.

LEO LONGLEY,
Special Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY,
Defendants.

No. 587.

Testimony.

Testimony taken before Leo Longley, special examiner in chancery, duly appointed by the Court, in the above-entitled cause. In pursuance of a notice duly made and served by the plaintiff upon the counsel for the defend-

ants, this examination was commenced at the office of the clerk of the above-entitled court, in the city of Los Angeles, on this 8th day of February, 1895, at the hour of ten o'clock in the forenoon. Present: Joseph H. Call, special assistant United States attorney; no appearance for defendants.

By reason of there being no appearance on behalf of the defendants, and by consent of counsel for the Government, this hearing is postponed to the same place, to be resumed at three o'clock P. M. of this day.

Hearing of the above-entitled cause resumed at the same place at two o'clock P. M., by the consent of the parties.

Present:

Joseph H. Call, Esq., Special Assistant United States Attorney, for the Plaintiff.

Joseph D. Redding, Esq., Solicitor and W. J. Trask, Esq., of Counsel, for the Defendants.

Mr. CALL.—In pursuance of an order of Court heretofore entered in this cause, I offer in evidence a certified copy of the articles of association and consolidation of the Southern Pacific Railroad Company with the Southern Pacific Branch Railroad Company, marked Exhibit 125 in the case of United States vs. Southern Pacific Railroad Company, numbered 68 on the docket of this court, and request that the same be now marked "Plaintiff's Exhibit No. 1."

Mr. REDDING.—The defendants object to the introduction of this evidence and exhibit as being incompetent, irrelevant, and immaterial. That the various articles of

consolidation entered into by and between the Southern Pacific Railroad Company, one of the defendants herein, and various other railroad companies, have been ratified and consented to by the United States Government by acts of Congress and by the officers of the Government, particularly the officers of the executive and interior department thereof; also by an act of Congress found in the Indian Appropriation Bill of 1894 (Statutes of 1893-94, page 335), and particularly by reference to and by virtue of that clause in the Indian Appropriation Act referred to which reads as follows: "That the right of way through the said Yuma Indian Reservation is hereby granted to the Southern Pacific Railroad Company for its line of railroad as at present constructed, of the same width, with the same rights and privileges, and subject to the limitations, restrictions, and conditions as were granted to the said company by the 23d section of the act approved March 3, 1871, entitled 'An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes'; provided, that said company shall, within ninety days from the passage of this act, file with the secretary of the interior a map of said right of way, together with said relinquishment by said company of its right of way through said reservation as shown by maps of definite location approved January 3, 1878." And furthermore, objected to on the ground that the State of California has, by acts of the legislature thereof, authorized and ratified the said various articles of consolidation and amalgamation, including the one herein sought to be introduced.

Mr. CALL.—In pursuance of the order of court above mentioned, I also offer in evidence a certified copy of a map filed by the Texas Pacific Railroad Company in the general landoffice on the second day of September, 1871, showing the location of said railroad through the State of California; together with a certified copy of a letter from the secretary of the interior to the commissioner of the general landoffice in reference thereto, dated September 2d, 1871; and together with an official communication from the president, chief engineer and secretary of said Texas Pacific Railroad Company, dated August 15th, 1871; said documents being marked Examiner's Exhibits numbers 46 and 47 in the case of United States vs. Southern Pacific Railroad Company, numbered 184 on the docket of this Court. And I now request that said exhibits, included under one certificate, be marked "Plaintiff's Exhibit No. 2."

Mr. REDDING.—The defendants object to the whole of this exhibit and each portion thereof, and to the map and to the letters constituting said exhibit, on the ground that the same are incompetent, irrelevant, and immaterial. That the portion of the exhibit which has been certified by the commissioner of the general landoffice as being an exemplification of the "map showing the general route of the Texas Pacific Railroad, through the State of California," is incompetent, irrelevant, and immaterial, in that it does not depict, show, designate, define, or illustrate any line or route whatsoever of the Texas Pacific Railroad Company between any points on the earth's surface or between those points named by the act of Congress of March

3, 1871; nor does it make either a designation of route, a definite location of route, or a general line of route between any points on the earth's surface or between any points named in said act of Congress, or along which or past which the Texas Pacific Railroad Company was entitled to locate its road. The defendants furthermore object to the introduction of said map on the ground that the map appears upon its face to have been manufactured without reference to the true topography or geography of the earth's surface, or without any reference thereto; the same is inaccurate and bears no relation whatever to the surface of the earth or to any points or localities thereon. Said map is a pretence, and is fictitious. The defendants furthermore object to the introduction of said evidence on the ground that under and by virtue of that portion of the Indian Appropriation Act which is found in the statutes of the United States of 1893 and '94, page 335, and which has been just quoted in the objection made by defendants to the introduction of the evidence just heretofore offered, the line of the route of the railroad of the defendant, the Southern Pacific Railroad Company, through and past the lands in controversy, has been ratified and accepted by the United States, the plaintiff in this action, and by the terms of said Indian Appropriation Act, and particularly that portion thereof found on page 835, the right of the Southern Pacific Railroad Company to the lands in controversy has been fully confirmed by the plaintiff in this action. Furthermore, objected to on the ground that the map offered is not the whole of the map

on file in the interior department, but only a portion thereof.

The same objections are made to the correspondence attached to the said map.

The defendants hereby give notice that they will move this Honorable Court to strike the evidence offered, namely, "Plaintiff's Exhibit 2," from the files of this Court, on the ground that the same is an impertinence and incumbers the record; and will bring on this motion for hearing as soon as the evidence in this case has been returned to the clerk. This motion will be based upon all of the papers and records in the case and upon this evidence last sought to be introduced.

Mr. CALL.—I offer in evidence a certified copy of an official map on file in the general landoffice, showing the line of route and withdrawal limits of the Texas Pacific Railroad Company, through the State of California; together with a copy of the letter from the commissioner of the general landoffice, dated September 27, 1871, to the register and receiver of the United States landoffice, at Los Angeles, California, directing lands along the line of said route to be withdrawn and reserved; together with the endorsements upon said exhibit, and now request that the same be marked "Plaintiff's Exhibit No. 3."

Mr. REDDING.—Mr. Call, will the words "Same objection" be allowed by the defendants to be used, and thus have the full force and effect of the last stated objection, as if the same had been reiterated in detail?

Mr. CALL.—That is satisfactory. And I understand that such is the practice in taking testimony in these cases, for both parties.

Mr. REDDING.—That will be agreeable to me. I make the same objection to the evidence last sought to be introduced and the same motion as just heretofore made.

CHARLES A. SHAW, a witness produced on behalf of the plaintiff, being first duly cautioned and solemnly sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CALL.)

Q. 1. What is your full name? A. Charles A. Shaw.

Q. 2. What is your occupation?

A. Clerk in the United States landoffice.

Q. 3. At Los Angeles, California?

A. Yes; at Los Angeles, California.

Q. 4. Please examine this plat and state whether you have compared that plat with the records of your office.

A. Yes. This plat of township 12 south, range 3 east, has been compared by myself with the official plat on file in this office.

Q. 5. Does that plat correctly represent and is it a true copy of the original in your office? A. Yes.

Q. 6. In the United States landoffice at Los Angeles, California.

A. Yes; it is a true copy of the official plat in said office.

Mr. CALL.—I offer this plat in evidence and request that the same be marked "Plaintiff's Exhibit No. 4."

Mr. REDDING.—Objected to as incompetent, irrelevant, and immaterial. Its purpose has not been shown.

Q. 7. (By Mr. CALL.) Please examine this plat and state whether that is also a true copy of the records of your office.

A. This is a true copy of township 14, south range 4 east, of the official plat on file in said office.

Mr. CALL.—I offer the plat mentioned in evidence and ask that the same be marked "Plaintiff's Exhibit No. 5."

Mr. REDDING.—Same objection.

Q. 8. (By Mr. CALL.) Please examine the plat which I now hand you and state whether that is a true copy of the records of your office.

A. This is a true copy of township 15 south, range one east, S. B. M., of the official plat on file in said office.

Mr. CALL.—I offer the plat in evidence, and ask that the same be marked "Plaintiff's Exhibit No. 6."

Mr. REDDING.—Same objection.

Q. 9. (By Mr. CALL.) Examine the plat which I now hand you and state whether this is a true copy of the records of your office of that township?

A. That is a true copy of township 16 south, range 1 west, S. B. M., of the official plat on file in said office.

Mr. CALL.—I offer the plat in evidence and request the same to be marked "Plaintiff's Exhibit No. 7."

Mr. REDDING.—Same objection.

Q. 10. (By Mr. CALL.) Please examine the plat which I now hand you and state whether that is a true copy of the records of your office of the township referred to.

A. This is a true copy of township 15 south, range 2 west, S. B. M., of the official plat on file in said office.

Mr. CALL.—I offer the plat referred to in evidence, and ask that the same be marked "Plaintiff's Exhibit No. 8."

Mr. REDDING.—Same objection.

Q. 11. (By Mr. CALL.) Did you carefully compare these several plats above mentioned with the records of your office?

A. I carefully compared all the maps in the minutest detail with the records of the office.

Q. 12. And you state that they are correct?

A. Yes, sir; and I state that they are correct.

Q. 13. Did you examine any other of the records of your office, especially the township plats in San Diego county in this State in order to ascertain what lands had been disposed of by the United States under patents to claimants under the Mexican and Spanish Governments?

Mr. REDDING.—Objected to as incompetent, irrelevant, and immaterial; calling for the verbal statement of the witness, the best evidence of which must be the records themselves.

A. I did.

Q. 14. (By Mr. CALL). Are you familiar with the records of the United States landoffice——

A. I am.

Q. 15 (Continuing.) At Los Angeles?

A. I am perfectly familiar.

Q. 16. Can you ascertain from an examination and comparison of the maps on file in that office what lands have been disposed of under Mexican and Spanish grants?

Mr. REDDING.—Same objection.

A. I can, because the official plat shows it—the official

survey shows it on each map as given by the United States surveyor general.

Q. 17. (By Mr. CALL.) Please state what township plats you examined, and what amount of land had been disposed of by the United States as Mexican and Spanish grants in each of the townships which you examined.

Mr. REDDING.—Objected to as incompetent, irrelevant, and immaterial; as hearsay; calling for the recollection of the witness, by which it is sought to have as evidence in this case a verbal report or recollection of the official records of the landoffice. That such testimony is not the best evidence and is incompetent. That the official plats speak for themselves. That the plaintiff has introduced a few of what purport to be official plats of certain townships, and is now seeking to have the verbal testimony of the clerk of the landoffice supply the absence of other plats. Such testimony is incompetent, immaterial, and irrelevant.

A. Well, here is the list.

Q. 18. (By Mr. CALL.) Have you prepared, and have you brought it with you, a written statement showing the amount of land disposed of in those townships for the purposes specified?

Mr. REDDING.—Same objection. Not the best evidence.

A. I have.

Q. 19. (By Mr. CALL). Please produce the same.

(Witness produces list.)

Q. 20. Have you carefully examined the tabulated statement referred to with the records of your office, so that you con testify accurately as to its correctness?

Mr. REDDING.—Same objection.

A. I have.

Mr. CALL.—I offer the exhibit or list in evidence, and request that the same be marked "Plaintiff's Exhibit"—

Q. 21. Before I offer it, just mark that "township and ranges."

Mr. REDDING.—I object to the witness making any change at this time on the tabulated statement, as being also hearsay, incompetent, and irrelevant, and calling for the recollection of the witness instead of referring to the records, official, of the office.

Mr. CALL.—I request the witness to plainly indicate upon the statement referred to the townships and ranges.

Mr. REDDING.—How is he going to do that in the absence of the official records?

Q. 22. (By Mr. CALL.) Does the statement referred to contain the correct description of the townships and ranges of San Bernardino base and meridian?

Mr. REDDING.—Same objection.

A. It does not contain a full description of the townships, for the reason that I neglected to mark on the top of the columns "township" and "range"—those two words. Otherwise it is all right.

Q. 23. (By Mr. CALL.) But the figures given upon the statement are the numbers of the townships and ranges, are they?

Mr. REDDING.—Same objection.

A. Yes.

(Witness indicates upon the statement as directed.)

Mr. CALL.—I offer the exhibit in evidence and request that the same be marked "Plaintiff's Exhibit No. 9."

Mr. REDDING.—Same objection. And defendants move to strike this exhibit from the records of this cause as being an impertinence to the record, and will call on said motion as in the manner and at the time that we have above specified with reference to the other exhibits.

Q. 24. (By Mr. CALL.) Referring to townships 11 south, range 1 west; 11 south, 2 west; 11 south, 3 west; 11 south, 4 west; 12 south, 1 west; 12 south, 2 west; 12 south, 3 west; 12 south, 4 west; 13 south, 1 west; 13 south, 2 west; 13 south, 3 west; 13 south, 4 west; 15 south, 1 west; 15 south, 2 west; 15 south, 3 west; 16 south, 1 west; 17 south, 1 west; 18 south, 1 west; 18 south, 2 west—state what is the aggregate amount of land disposed of by the United States, as shown by the plats of your office, to Mexican and Spanish grant claimants in those townships.

Mr. REDDING.—Defendants object to this question on the above grounds. And also object to the witness answering orally, he having submitted his own tabulated statement, unless it is the intention of counsel for the plaintiff to have the witness testify now differently from the contents of the tabulated statement.

A. The area included in private grants in the townships referred to amounts to 196,306.39 acres.

Q. 25. (By Mr. CALL.) Referring to townships 11 south, range 1 east; 12 south, 1 east; 13 south, 1 east; 14 south, 1 east; 15 south, 1 east; 16 south, 1 east; 17 south, 1 east; 18 south, 1 east—state what is the aggregate amount of lands in those townships disposed of by the

Government, as shown by the records of the United States landoffice at Los Angeles, to Mexican and Spanish grant claimants.

Mr. REDDING.—Same objection.

A. 66,145.47 acres.

Q. 26. (By Mr. CALL.) Referring to townships 10 south, 2 east; 10 south, 3 east; 11 south, 2 east; 11 south, 3 east; 12 south, 2 east; 12 south, 3 east; 13 south, 4 east; 14 south, 4 east; 15 south, 4 east—state what is the aggregate amount disposed of as aforesaid by the Government in those townships.

Mr. REDDING.—Same objection.

A. 92,390.64 acres.

Q. 27. (By Mr. CALL.) In the three aggregate quantities stated by you what amount has been disposed of as aforesaid in the even sections, and what in the odd sections?

Mr. REDDING.—Same objection.

A. I should think about half even and half odd.

Q. 28. (By Mr. CALL.) Did you compare the records of your office to ascertain that?

Mr. REDDING.—Same objection.

(No response.)

Q. 29. (By Mr. CALL.) State what you did in reference to examining the records of your office to ascertain what proportion was in even sections and what in the odd sections?

Mr. REDDING.—Same objection.

A. I made an examination of the private grants as they came in in the different townships, and in my judg-

ment it would be about one-half in the even sections and the other half in the odd sections. But as an absolute matter of fact, I could not hardly tell whether there would be more in one or of the other.

Q. 30. (By Mr. CALL.) Would it be substantially accurate to say that one-half is in the even and one-half in the odd sections?

Mr. REDDING.—Same objection.

A. I should think so.

Mr. CALL.—That is all.

Cross-Examination.

(By Mr. REDDING.)

Q. 31. Mr. Shaw, have you ever seen "Plaintiff's Exhibit No. 3" before.

A. I have not seen that one, but I have seen the one on file in the United States landoffice.

Q. 32. Now, do any of the plats offered as evidence in this case and marked, respectively, Plaintiff's Exhibits 4, 5, 6, 7, and 8, refer to townships which are south of the alleged line of location of the Texas Pacific Railroad Company, or south of the line marked upon "Plaintiff's Exhibit No. 3"?

A. No. They are all north of it.

Q. 33. They are all north of it, aren't they?

A. Yes, sir.

Q. 34. Why did you not produce official plats of the various other townships concerning which you have testified, Mr. Shaw, for introduction or offer in this case?

A. I was not requested to do so by Mr. Call.

Q. 35. What request did he make upon you?

A. He just asked me to bring a statement of the lands disposed of as Mexican grants in the townships referred to in that list marked "Plaintiff's Exhibit No. 9."

Q. 36. Then why did you happen to bring any township plats or copies of township plats?

A. I brought them upon request of Mr. Call.

Q. 37. Well, then, he asked you to bring some township plats and not others?

A. Yes, sir.

Q. 38. Do you know why he asked you to bring some township plats and bring a statement concerning the others instead of the others themselves?

A. No, sir; I do not.

Q. 39. Can you produce certified copies of the other township plats as well as those that you have already offered? A. Yes, sir.

Q. 40. There is no reason why this cannot be done, is there? A. No reason at all, sir.

Q. 41. Now, do you believe that your memory is as accurate concerning the condition of a township as the township itself, or would you state that the township itself would be the best evidence?

A. With reference to those figures with regard to the grants I think—I know that those figures in the list are correct, because I took them from the township myself.

Q. 42. Are you able to describe the location of those Spanish grants from memory, or are you not?

A. No, sir; I am not able to describe them from memory.

Q. 43. Do you know from memory where the lines of

these grants run on the township plats? Can you so describe and testify?

A. No, sir; I could not.

Q. 44. Now, have you written here in your own handwriting that the amount of private grants in township 11 south, range 1 west, is 447.92 acres. You say that you have taken that from the official plat? A. I have.

Q. 45. Is it possible that you might have made an error in that?

A. I think not. I think that that would be about correct.

Q. 46. Well, suppose that you had your own matters at stake, which would you prefer to rely upon—your figures that you copy yourself, or upon the original official plat?

A. Well, I copied those from the original official plat and I think that they are correct. Of course, if I have made a mistake I could not say.

Q. 47. You could not say but what you might have made a mistake?

A. I could not say but what I might have made a mistake; no, sir.

Q. 48. You would prefer, if you were called upon to be absolutely accurate, to rely upon the official plats themselves, would you not? A. Certainly.

Mr. REDDING.—That is all.

Mr. CALL.—That is all.

The taking of testimony on behalf of the plaintiff is concluded for to-day, to be resumed hereafter upon reasonable notice or agreement of counsel.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY,
Defendants.

No. 587.

Testimony.

Testimony taken on behalf of the plaintiff before Leo Longley, special examiner, and stenographer, in the above-entitled cause, by consent of parties, at the office of the clerk of the United States Circuit Court, in the city of Los Angeles, California, this 13th day of April, 1895.

Present:

Joseph H. Call, Esq., Special Assistant United States Attorney, for the Plaintiff.

Joseph D. Redding, Esq., Solicitor and Counselor, for the Defendants.

Mr. CALL.—I offer in evidence a certified copy of a map from the general landoffice, showing the route and withdrawal limits for the Texas Pacific Railroad, from El Paso, Texas, to San Diego, on the bay of San Diego, California, together with a letter attached thereto, from the secretary of the interior to the commissioner of the general landoffice, dated September 2, 1871, and a letter, likewise attached, from the officers of the Texas-Pacific Railroad, dated August 15, 1871, certifying to said map, and requesting a withdrawal of lands, and so forth; and ask that the same be marked "Plaintiff's Exhibit No. 10."

Mr. REDDING.—Mr. Call, will it be agreeable to you if, in entering my objection to these offers and exhibits and letters, I state that I make the same objection and motion as I did to "Plaintiff's Exhibit No. 2," heretofore offered, and that in doing so it will be the same as if I had repeated that objection and motion in full?

Mr. CALL.—That is satisfactory.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy from the interior department of a decision of the assistant attorney general, dated November 2, 1885, together with and attached thereto a decision of the secretary of the interior dated November 2, 1885, with reference to the conflicting limits of the Southern Pacific claimed grant and the Texas Pacific grant in California, and ask that the same be marked "Plaintiff's Exhibit No. 11."

Mr. REDDING.—Defendants object to this offer and this exhibit and this correspondence as being incompetent, irrelevant, and immaterial.

Mr. CALL.—I offer in evidence a certified copy of the articles of consolidation of the Southern Pacific Railroad and another road, dated 1874, and ask that the same be marked "Plaintiff's Exhibit No. 12."

Mr. REDDING.—Defendants make the same objection to this offer and this exhibit as they have heretofore made to the offer and the exhibit marked Plaintiff's 1.

Mr. CALL.—I offer in evidence a certified copy of the articles of consolidation and incorporation of the Southern Pacific Railroad Company and various other railroads, dated 1888, and ask that the same be marked "Plaintiff's Exhibit No. 13."

Mr. REDDING.—Same objection.

The further taking of testimony herein is now adjourned to be resumed upon further notice.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY,
Defendants.

No. 587.

Testimony.

Testimony taken on behalf of the defendants before Leo Longley, special examiner in chancery, duly appointed by the Court, in the above-entitled cause, by consent of the parties, at the office of the clerk of the United States *District* Court, in the city of Los Angeles, California, this 18th day of October, 1895.

Present:

William Singer, Jr., Esq., for the Defendants.

Joseph H. Call, Esq., Special Assistant United States Attorney, for the Plaintiffs.

Mr. CALL.—It is stipulated that defendants shall have until October 19, 1895, inclusive, in which to complete the taking of their testimony. Is that correct?

Mr. SINGER.—That is agreeable.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Charles Crocker, president of the Southern Pacific Railroad Company, addressed to Hon. C. Delano, secretary of the interior, and dated March 22, 1871, which accompanied the map designating the general route of the Southern Pacific branch line railroad, the map being "Defendants' Exhibit No. 9" herein. The letter herein introduced is marked "Defendants' Exhibit No. 31A," in suit No. 600, and I ask that it be marked "Defendants' Exhibit No. 9A."

Mr. CALL.—Objected to as incompetent, immaterial, and irrelevant; and upon the further ground that the act of Congress of March 3, 1871, made no grant of alternate sections of land in aid of the socalled Southern Pacific Railroad branch line; and upon the further ground that said Southern Pacific Railroad branch line made no connection with the Texas Pacific Railroad at or near the Colorado river, or at any other point; and upon the further ground that the corporation, the Southern Pacific Railroad Company, as constituted in 1873 and 1874 and thereafter, by virtue of consolidations with other roads, was not authorized to construct a railroad from Tehachapi Pass, by way of Los Angeles, to the Colorado river; and upon the further ground that the Southern Pacific Railroad Company did not, within the time required by the act of Congress of 1871, or at all, file an acceptance in

the office of the secretary of the interior of the terms and conditions of said act; and upon the further ground that the issues in this case, so far as concerns the lands claimed by the Southern Pacific Railroad Company under said act of 1871, have been previously adjudicated; and upon the further ground that the lands involved in this suit were granted and reserved by the United States before any right of the Southern Pacific Railroad Company attached thereto. And upon the same grounds I object to each of defendants' exhibits from number 1 to number 28, inclusive, heretofore offered.

(It is stipulated that both parties to this suit may introduce in evidence herein any of the depositions or documents on file in the case of United States vs. Southern Pacific Railroad Company, No. 184, and United States vs. Southern Pacific Railroad Company, No. 177, and United States vs. Southern Pacific Railroad Company, No. 68, and United States vs. Southern Pacific Railroad Company, No. 600, on the docket of this Court, without either party objecting thereto upon the ground that such evidence was taken in another case.)

Mr. SINGER.—I offer in evidence a certified copy of a letter from Walter H. Smith, acting secretary of the interior, addressed to Hon. Willis Drummond, commissioner of the general landoffice, dated April 3, 1871, transmitting a map filed by Charles Crocker, as president of the Southern Pacific Railroad Company, designating the general route of its branch line road, in which the secretary of the interior directed a withdrawal of the lands within twenty miles along the route designated, the map

referred to being "Defendants' Exhibit No. 9" herein, and the letter introduced being "Defendants' Exhibit No. 31B" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 9B" herein.

Mr. CALL.—Mr. Singer, in this case it is understood that the words "same objection" shall be held to include the preceding objections in full?

Mr. SINGER.—It is agreeable to me that it shall be throughout.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Willis Drummond, commissioner of the general landoffice, dated April 21, 1871, addressed to the register and receiver at Visalia, California, transmitting a map showing the twenty and thirty miles limits of the Southern Pacific Railroad Company's branch line grant, and ordering a withdrawal of all the odd numbered sections within such limits, which certified copy is attached to the map introduced in suit No. 600 as "Defendants' Exhibit No. 311," and I ask that the certified copy of the letter be marked "Defendants' Exhibit No. 29."

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Willis Drummond, commissioner of the general landoffice, dated April 21, 1871, addressed to the register and receiver at Los Angeles, California, transmitting a map showing the twenty and thirty miles limits of the Southern Pacific Railroad Company's branch line grant, and ordering a withdrawal of all the odd numbered sections within such limits, which certified

copy is attached to the map introduced in suit No. 600 as "Defendants' Exhibit No. 312." I ask that a copy of the letter be marked "Defendants' Exhibit No. 30" herein.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a map showing the twenty and thirty miles limits of the Southern Pacific Railroad Company's branch line grant which accompanied the letters introduced herein as Defendants' Exhibit Nos. 29 and 30, being so much of the map introduced in suit No. 600 as "Defendants' Exhibit No. 256," as relates to the branch line grant, and ask that the map be marked "Defendants' Exhibit No. 31" herein.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Delano, secretary of the interior, dated February 17, 1874, and addressed to L. M. Foulke, Eugene L. Sullivan and Calvin Brown, as commissioners of the Southern Pacific Railroad Company, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the Southern Pacific Railroad Company's roads, and requesting them to examine and report upon the completed section of fifty miles of the branch line road, commencing at a point near Fernando in section 3, township 2 north, range 15 west, and ending at a point in section 26, township 1 south, range 9 west, San Bernardino meridian, being "Defendants' Exhibit No. 313" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 32" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from R. B. Cowen, acting secretary of the interior, dated October 1, 1875, and addressed to Messrs Foulke, Brown and Sullivan, as commissioners of the Southern Pacific Railroad, requesting them to examine and report upon an additional fifty miles of the Southern Pacific Railroad Company's branch line road, commencing at a point in section 27, township 1 south, range 9 west, and running in a southeasterly direction to a point in section 4, township 3 south, range 1 west, San Bernardino meridian, being "Defendants' Exhibit No. 314" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 33" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a telegram from Z. Chandler, secretary of the interior, dated June 17, 1876, addressed to L. M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, requesting them to proceed with the examination of fifty additional miles of the Southern Pacific Railroad Company's branch line road, being "Defendants' Exhibit No. 315" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 34" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Z. Chandler, secretary of the interior, dated February 6, 1877, addressed to L. M. Foulke, Calvin Brown and E. L. Sullivan, commissioners, requesting them to examine and report upon the completed section of fifty miles of the Southern Pacific Railroad Company's

branch line road, commencing near Fernando, in section 3, township 2 north, range 15 west, and extending in a northerly direction to a point in section 17, township 11 north, range 12 west, San Bernardino meridian, being "Defendants' Exhibit No. 316," in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 35" in this suit.

Mr. CALL.—Same objection.

The further taking of testimony herein is now adjourned until October 19, 1895, at 9 o'clock A. M.

October 19, 1895, 9 o'clock A. M.

Present:

William Singer, Jr., Esq., for the Defendants.

Joseph H. Call, Esq., Special Assistant United States Attorney, for the Plaintiff.

Mr. SINGER.—I offer in evidence a certified copy of the appointment of Eugene L. Sullivan, A. S. Bender, and Z. B. Sturgus, as commissioners, to examine and report upon the Southern Pacific branch line railroad, signed by the President, R. B. Hayes, and dated October 27, 1877, being "Defendants' Exhibit No. 317" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 36" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Schurz, secretary of the interior, dated October 27, 1877, and addressed to E. L. Sullivan, A. S. Bender, and Z. B. Sturgus, notifying them of their appointment by the President, and requesting them to ex-

amine and report upon the section of 118.37 miles of the Southern Pacific Railroad Company's completed road, commencing at a point in section 24, township 5 south, range 7 east, and ending at a point in section 26, township 16 south, range 22 east, San Bernardino meridian, being "Defendants' Exhibit No. 318" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 37."

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from S. S. Burdett, commissioner of the general landoffice, dated September 17, 1874, and addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of five sections of ten miles each of its branch line road, commencing at a point in section 3, township 2 north, range 15 west, and ending at a point in section 27, township 1 south, range 9 west, San Bernardino meridian, and transmitting a map, attached, showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter, this letter and map being "Defendants' Exhibit No. 319" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 38" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from S. S. Burdett, commissioner of the general landoffice, dated December 20, 1875, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific *Pacific* Railroad Company had filed

its map of definite location and construction of the second section of fifty miles of its railroad, extending from a point in section 27, township 1 south, range 9 west, to a point in section 4, township 3 south, range 1 west, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter, this letter and map being "Defendants' Exhibit No. 320" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 39" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from U. J. Baxter, acting commissioner of the general landoffice, dated August 19, 1876, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the third section of fifty miles of its branch line road, extending from a point in section 4, township 3 south, range 1 west, to a point in section 24, township 5 south, range 7 east, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter, the letter and map being "Defendants' Exhibit No. 321" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 40" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a

letter from J. A. Williamson, commissioner of the general landoffice, dated March 27, 1877, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the fourth section of 78.59 miles of its branch line road, commencing at a point in section 3, township 2 north, range 15 west, and ending at a point in section 17, township 11 north, range 12 west, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter; this letter and map being "Defendants' Exhibit No. 322" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 41" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. A. Williamson, commissioner of the general landoffice, dated April 9, 1878, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the fifth section of 118.37 miles of its branch line road, commencing at a point in section 24, township 5 south, range 7 east, and ending at a point in section 26, township 16 south, range 22 east, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter; the letter and map being "Defendants' Exhibit

No. 323" in suit No. 600. I ask that it be marked "Defendants' Exhibit No. 42" in this suit.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence the printed general landoffice report for the year 1875, for the purpose of showing at page 409 thereof that the estimated quantity embraced within the twenty and thirty miles limits of the grant to the Southern Pacific Railroad Company, branch line, contains three million five hundred and twenty thousand acres, and that the estimated quantity which the company will receive from the grant is three million acres, this having been introduced as "Exhibit No. 324" in suit No. 600, and I ask that it be copied into the record here and marked "Defendants' Exhibit No. 43."

Mr. CALL.—Objected to as irrelevant and immaterial.

*Mr. *CALL.*—I offer in evidence another part of this same report, to wit, the balance of pages 408 and 409 of said report, for the purpose of showing that the quantity of land estimated by the commissioner of the general landoffice as falling in the several limits of the grant to the Texas Pacific Railroad, and to which that company would be entitled, is the amount of eighteen million acres, and the amount so estimated which said company would receive from such grant is the amount of seventeen million acres.

*Mr. *SINGER.*—I object to it as irrelevant and immaterial.

(It is stipulated that the examiner shall copy in this record so much of said report as is contained on the title

* Same as certified record.

page, and the heading on the next page, and that part of said report on pages 408 and 409 which relates to the Southern Pacific Railroad Company, main and branch line, and to the Texas Pacific Railroad, including the table headings on page 408.)

(It is stipulated that the defendants may withdraw any of the exhibits offered at the hearing to-day and yesterday, but not including exhibits from any other case, upon substituting a full and complete copy of each of said exhibits, to be compared and certified to by the clerk of this Court; and it is further stipulated that in order to make copies of said exhibits the defendants may withdraw such exhibits for the purpose of making such copies, to be returned to the files of the court within fifteen days from date hereof. And it is further stipulated that an order of Court shall be entered in accordance with this stipulation.)

The further taking of testimony herein is adjourned to be resumed upon further notice.

[Endorsed]: Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 1.

Articles of association, amalgamation, and consolidation

Made and executed on this twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company of the first part, and the Southern Pacific Branch Railroad Company of the second part, witnesseth:

That whereas, the said party of the first part heretofore, to wit, on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws *under the laws* of said State, to wit: The San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subsequently amended, to wit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining, and operating a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado river, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last-

named county, a distance of forty-five miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established;

And whereas, the said party of the second part was, heretofore, to wit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City in the county of Monterey, southeasterly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above-described line, at or near San Miguel in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad, running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads in the aggregate being, as near as may be, four hundred and twenty-eight miles in length;

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises will be mutually advantageous;

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties have

consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth;

Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other to the following articles, to wit:

Article First.

Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims, and demands of every kind whatsoever as well in possession as in expectancy, at law or in equity, and do grant, convey, and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively; subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, judgments, claims and charges thereon or in anywise affecting the same or any part thereof.

Article Second.

The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate the several lines of railroads hereinbefore described, to wit, a line of railroad from the city of San Francisco, in the

State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego to some point on the Colorado river, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, passing through the counties of Los Angeles, San Bernardino and San Diego, a distance of three hundred and twenty-four miles as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last-named county, a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described at or near Salinas City, in the county of Monterey, southeasterly through said county and into Kern county to a point south of Tulare Lake in said last-named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles, as near as may be; also a line of railroad from a point on the last above-described line, at or near San Miguel, in the county of San Luis Obispo, thence in a southerly direction through said county, the county of Santa Barbara, and into the county of Los Angeles to a point of intersection with the line of railroad secondly above described, to wit, the line from Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near

the Colorado river, a distance of two hundred and forty miles as near as may be—making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter, from time to time, establish.

Article Third.

The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation hereafter to be adopted, viz., C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. H. Miller, Jr., and J. L. Willcutt.

Article Fourth.

The capital stock of said new corporation shall be ninety million dollars, divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth.

Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and, where the same has not been fully paid

up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth.

And the said several parties of the first and second parts, each for itself, hereby sells, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation, its successors and assigns forever, all its property, real, personal, and mixed of every kind and description; all its capital stock; all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description; and all rights, privileges and franchises, corporate and otherwise, held, owned, or claimed by said parties of the first and second parts, or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims, and charges thereon, or in anywise affecting the same.

Article Seventh.

The said new and consolidated company and corporation is to be liable for, and shall fulfill, perform, do and pay all and each of the contracts, and agreements, covenants, duties, obligations, liabilities, debts, dues, and demands of the said several parties of the first and second parts; but this amalgamation and consolidation shall

not in any way relieve the said parties of the first and second parts, or the stockholders thereof, from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary, and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several boards of directors made on the twelfth day of August, 1873.

[Seal] SOUTHERN PACIFIC RAILROAD COMPANY,
By DAVID D. COLTON,
Vice-President.
J. L. WILLCUTT,
Secretary.

[Seal] SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,
By B. R. CROCKER,
President.
By E. H. MILLER, Jr.,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Railroad Company, party of the first part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, here-

by consent to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD,
CONTRACT & FINANCE CO.,
Pr W. E. BROWN, Secy.
MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, 1873.

LELAND STANFORD.
E. H. MILLER, Jr.
ALBERT GALLATIN.
MARK HOPKINS.
E. W. HOPKINS.
C. H. CUMMINGS.
B. R. CROCKER.

State of California, Department of State.

I, W. C. Hendricks, secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, amalgamation, and consolidation between the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State at office in Sacramento, California, the 5th day of September, A. D. 1889.

[Seal]

W. C. HENDRICKS,
Secretary of State.
By H. B. Davidson,
Deputy.

[Endorsed]: (Copy.) No. 258. Articles of association, amalgamation and consolidation of the Southern Pacific R. R. Co. with the Southern Pacific Branch R. R. Co. (Endorsed:) Filed in the office of the secretary of State, August 19, 1873. Drury Melone, Secty. of State. H. By H. H. Russell, Depty. Record Book, 4, page 584. "Exhibit AB." Stipulated before the master, Exhibit "B." J. D. R. J. H. C. U. S. Circuit Court, Southern Dist. of Cal. United States vs. S. P. R. R. Co. No. 68. Master's Exhibit No. 125. Filed March 20, 1890. Chas. L. Batcheller, Master and Examiner in Chancery.

U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. 195. Master's and Examiner's

Exhibit No. 1. E. H. Lamme, Master and Examiner in Chancery. For complainant. Plaintiffs' Exhibit No. 1. E. H. Lamme, Examiner. Filed November 22d, 1889. Wm M. Van Dyke, Clerk. E. H. L. 3.

U. S. Cir. Court, Southern District California. S. P. R. R. Co. vs. Hutton et al. 305. Examiner's Exhibit No. 3. E. H. Lamme, Master and Examiner in Chancery.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 1. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiffs' Exhibit No. 3. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 3.

M. N. (4-207a.) W. J. M.
F.

Department of the Interior.

General Land Office,

Washington, D. C., October 7th, 1893.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed diagram showing the limits of the withdrawal made for the Texas Pacific Railroad, in California, is a true and literal exemplification of the original on file in this office and the letter attached thereto is a true copy of office letter of September 27, 1871, of record in this office, transmitting

a copy of said original diagram to the district officers at Los Angeles, California, and ordering a withdrawal of the lands embraced thereby.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,
Commissioner of General Landoffice.

F.
W. K. M.

Department of the Interior,
General Landoffice,
September 27th, 1871.

Register acks. receipt Jany. 23d, 1873, stating that instructions and map reached their office Oct. 15th, 1871. "K." 33.274.

Register and Receiver, Los Angeles, California.

Gentlemen: By direction of the secretary of interior, dated 2d inst., and in accordance with the 12th section of the act of 3d March, 1871, granting lands to aid in the construction of the Texas Pacific Ralroad, I transmit herewith a map showing the designated line of route of said railroad in the State of California and the limits to the extent of twenty miles of the land grant on each side of said road, and you are hereby directed to withdraw from pre-emption or homestead entry, private entry, or sale, all the odd-numbered sections of land surveyed or unsurveyed with-

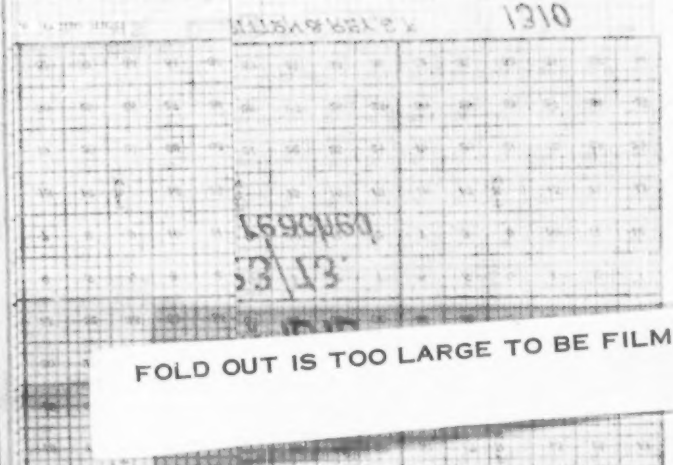
within those limits. The even-numbered sections are by the terms of the act open to pre-emption and homestead entry when surveyed, and you will so treat them, holding them in accordance with the requirements of the act of March 3d, 1853, at the double minimum price of $2.50 per acre.

Pre-emption or homestead settlers on any of the surveyed lands prior to this withdrawal, and who shall meet the requirements of law, will be entitled to hold their lands at the minimum price of $1.25 per acre.

This order will take effect from the date of its receipt by you, and you are directed to acknowledge the exact time of its reception.

Very respectfully,

W. W. CURTIS,
Acting Commissioner.



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Plaintiffs' Exhibit No. 9.

Townships	Range	Private grants. Acres.
11 S.,	1 W.	447.92
11 S.,	2 W.	206.06
11 S.,	3 W.	1,919.55
11 S.,	4 W.	6,114.10
12 S.,	1 W.	11,665.09
12 S.,	2 W.	17,063.35
12 S.,	3 W.	13,210.00
12 S.,	4 W.	11,740.00
13 S.,	1 W.	2,709.32
13 S.,	2 W.	15,182.65
13 S.,	3 W.	10,062.79
13 S.,	4 W.	2,000.00
15 S.,	1 W.	20,604.00
15 S.,	2 W.	15,422.00
15 S.,	3 W.	18,011.00
16 S.,	1 W.	16,520.63
17 S.,	1 W.	15,738.00
18 S.,	1 W.	11,843.93
18 S.,	2 W.	5,846.00
		196,306.39
11 S.,	1 E.	10,266.17
12 S.,	1 E.	1,319.60
13 S.,	1 E.	16,023.48
14 S.,	1 E.	8,540.63
15 S.,	1 E.	16,710.00
16 S.,	1 E.	4,970.16
17 S.,	1 E.	7,001.93
18 S.,	1 E.	1,313.50
		66,145.47

66,145.47

10 S.,	2 E.	3,900.00
10 S.,	3 E.	15,111.00
11 S.,	2 E.	8,200.00
11 S.,	3 E.	15,204.85
12 S.,	2 E.	2,134.96
12 S.,	3 E.	12,466.97
13 S.,	4 E.	5,479.86
14 S.,	4 E.	21,123.00
15 S.,	4 E.	8,770.00
		92,390.64

92,390.64
196,306.39
66,145.47

354,842.50 acres

[Endorsed]: Plff. 9. L. L. United States Circuit Court, Ninth Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 9. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 10.

Plff. 10, L. W. J. M.
"F"
F. I. W. (4—207.)

Department of the Interior.

General Landoffice,
Washington, D. C., March 22, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of a map, certificate, and letter is a true and literal exemplification of the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,
Commissioner of General Landoffice.

Exd. M. B. H.
S. A. B.

Land Grant Railroads.

Department of the Interior.

Washington, D. C., 2d Sept. 1871.

Sir: I transmit herewith a map (and certificate of President and Chief Engineer dated 15th ult.) of the general route of the Texas Pacific Railroad "from El Paso, State of Texas, to Ship's Channel, San Diego, State of California," being that portion of the line on which the public lands have been granted to the company.

In compliance with the act of 3d March, 1871 (Sec. 9th and 12th sections thereof, 16th Statutes, pp. 576-7), you will cause a withdrawal of the granted lands "from pre-emption, private entry and sale.

Very respectfully,
Your obt. servant,
C. DELANO,
Secretary.

—Map 3.
Tube 48.
Div. "F"

Office of the Texas Pacific Railroad,

August 15, 1871.

It is hereby certified that in pursuance of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," wherein a grant of lands is made by the ninth section to the Texas Pacific Railroad, who are thereby authorized to construct a railroad and telegraph line from a point at or near Marshall, county of Harrison, State of Texas, to Ship's Channel, bay of San Diego, State of California, this map shows the general location of the line or route of said railroad, from El Paso, State of Texas, to Ship's Channel, San Diego, State of California (being that portion of the line on which the public lands granted by section IX of the above-entitled act are located), as adopted by the Texas Pacific Railroad Company in compliance with said act of Congress.

In testimony whereof the Texas Pacific Railroad Company has caused the same to be signed by its president and engineer, and has attached hereunto its corporate seal at New York on the day and year first above written.

[Seal] MARSHALL O. ROBERTS,
President.

GEO. C. BUELL,
Chief Engineer.

W. P. TALBOYE,
Asst. Secretary.

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104

U. S. Circuit Court
4th Circuit do. Dist of Cal
U. S
No. 587 GIVON
J. P. R. R. Co et al
Plaintiffs Ex hibit 12. 10
Co Complaint
Diverse Ex amiver.

Plaintiffs' Exhibit No. 11.

Plffs. Ex. 11. L. A. L.

"F" W. J. M.

F. I. W. (4—207.)

Department of the Interior.

General Landoffice,

Washington, D. C., March 22, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed copy of the opinion of the assistant attorney general, dated November 2, 1885, and of a letter from the honorable secretary of the interior, dated November 2, 1885, is a true and literal exemplification of the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of General Landoffice.

Compd.

S. A. B. M. B. H.

Department of the Interior.

Office of the Assistant Attorney General,

Washington, D. C., November 2, 1885.

Honorable L. Q. C. Lamar, Secretary of the Interior.

Sir: Agreeably to request for an opinion touching the matter of the restoration to market of certain lands in

California within what are claimed as the joint limits of the Texas Pacific and Southern Pacific Railroad Companies, I beg leave to submit the following:

On March 3, 1871, Congress passed an act incorporating the Texas Pacific Railroad Company, and authorizing said company to construct a railroad and telegraph line, "From a point at or near the town of Marshall, county of Harrison, Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizon, to a point on the Rio Colorado at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, California, to Ship's Channel, in the bay of San Diego, in the State of California."

It was also thereby enacted: "That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for there is hereby granted to said Texas Pacific Railroad Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line as such line may be adopted by said company, through the territories of the United States, and ten alternate sections per mile on each side of said railroad in California when the same shall not have been sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not

have attached at the time the line of said road is definitely fixed."

It is further provided: "That the said Texas Pacific Railroad Company shall commence the construction of its road simultaneously at San Diego, in the State of California, and from a point at or near Marshall, Texas, * * and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points complete and in running order within two years after the passage of this act, and to continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego in California within ten years after the passage of this act," etc.

Section 23 of the same act provides as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866; provided, however, that this section shall in no way affect or impair the rights present or prospective of the Atlantic and Pacific Railroad Company or any other railroad company." (See 16 U. S. Stat., pp. 573-579.)

It is under the last-named section that the Southern Pacific Railroad Company, appellant, claims the lands now in controversy, to wit, lands alleged to be within what are claimed as the common grant limits of the Texas Pacific and the Southern Pacific roads.

In order to determine what construction it is proper to give to the granting clause of sec. 23 of the above act of March 3, 1871, let us consider the legal rules laid down by the Supreme Court of the United States for the interpretation of granting acts of this character.

In the case of the "Dubuque and Pacific Railroad Company v. Litchfield" (23 Howard, p. 88), the Supreme Court says:

"All grants of this description are strictly construed against the grantees; nothing passes but what is conveyed in clear and explicit language; and as the rights here claimed are derived entirely from the act of Congress, the donation stands on the same footing as a grant by the public to a private company, the terms of which must be plainly expressed in the statute; and if not thus expressed, they cannot be implied."

Further on, quoting the language of Lord Ellenborough, the Court says:

"If the words would admit of different meanings, it would be right to adopt that which is more favorable to the interests of the public, and against that of the company. * * * * The reason of the above rule is obvious—parties seeking grants for private purposes usually draw the bills making them. If they do not make the language sufficiently explicit and clear to pass every-

thing that is intended to be passed, it is their own fault. On the other hand, such a construction has a tendency to prevent parties from inserting ambiguous language for the purpose of taking by ingenious interpretation that which cannot be obtained by plain and express terms."

It can scarcely be claimed that the reason of this rule is the less applicable to the present case because of the fact that more than one grant is provided for in the same act.

At the time the Southern Pacific Company was seeking to procure the grant provided for in section 23 of said act, the possibility of a forfeiture of its grant by the Texas Pacific was well known to said Southern Pacific Company. Hence, according to the above rule of construction, if said section 23 of said act is so worded as to leave it uncertain whether the lands now in question passed to the Southern Pacific, or whether in the event of a forfeiture by the Texas Pacific—just such as has taken place—it was intended that said lands should revert to the Government, all such uncertainty must be resolved in favor of the Government.

The same rule of construction as that above laid down in 23d Howard has been again and again reiterated by the Supreme Court of the United States—notably in the case of the Leavenworth etc. R. R. Co. v. The United States. (See 92 U. S. 740.)

It will be observed that the first and chief object of the above-named act was to secure the building of a railroad from Marshall, Texas, to the bay of San Diego, California; and secondly, to connect said railroad, when

built, with the city of San Francisco. And it appears, from appellant's own showing, that although a map of general route of said Texas Pacific Railroad was filed in the general landoffice, yet not a mile of said road was ever built, nor was its line of definite location ever established. So that not only was it impossible for the Southern Pacific road to establish a connection between said road and city of San Francisco (the very thing which the Southern Pacific Company was required to do as the condition, and in consideration of its grant), but it was impossible for the said last-named company, in the absence of a definite location of the line of said Texas Pacific road, either to connect therewith or to know at what point such connection could even prospectively be made. Thus matters stood up to February 28, 1885, when Congress declared a forfeiture of the lands granted to said Texas Pacific Railroad Company. In pursuance of said act, and under instructions from the honorable secretary of the interior, the honorable commissioner of the general landoffice, on March 17, 1885, directed the register and receiver of the landoffice at Los Angeles, California, to cause notice to be published, "That the odd-numbered sections of land heretofore withdrawn for said grant (to the Texas Pacific Railroad Company) have been restored, and that the books of your office are now open for the entry of said lands under the pre-emption, homestead, and other laws relating to unoffered lands."

On the following day, to wit, March 8, 1885, the above order was modified by a letter addressed to said register

and receiver at Los Angeles, signed by the then acting commissioner of the landoffice, advising them that, "The lands in the limits of the withdrawal for said (Texas Pacific) grant, which are also within the limits of the grant to aid in the construction of the branch line of the Southern Pacific Railroad, will not be affected by this restoration."

On April 4, 1885, the Hon. A. J. Sparks, commissioner of the general landoffice, by letter to the said register and receiver at Los Angeles, revoked the said modified order of March 18, 1885, leaving in force the aforesaid order of March 17, 1885. From this last-named order of April 4, the Southern Pacific Railroad Company has appealed.

Long prior to the passage of said act of Congress, declaring a forfeiture of said grant to the Texas and Pacific Company, the Southern Pacific Company had extended its road from Tehachapi southward, through the lands embraced within the map of general route of the Texas Pacific, to and across the Colorado river, by way of El Paso, into Texas; and the question now presented is, Can said Southern Pacific Company, by virtue of said 23d section of said act of March 3, 1871, rightfully claim the alternate odd sections of land lying along the line of its said road, and within the grant limits of the Texas Pacific Road?

In view of the fact that, without any fault of the Government, it became impossible for the Southern Pacific to establish a railroad connection between the city of San Francisco and said Texas Pacific road "at or near

the Colorado river"—the accomplishment of which work, as suggested above, constituted the very condition upon which its right to a grant was seemingly made to depend—it might be a serious question whether or not, in the absence of congressional relief, said Southern Pacific Company is in a position to demand an acre of the land originally intended to be granted. According to the general doctrine pervading the law of dependent contracts, an impossibility to perform the conditions of such a contract will not excuse nonperformance when such impossibility is occasioned either by the act of God or a stranger. (See 2 Chitty on Contracts, 9th English edition, p. 1086.)

But without discussing the question of the applicability of this doctrine to the case under consideration, let us inquire whether it clearly appears that Congress ever intended to grant to the Southern Pacific Company any land within the grant limits of the Texas Pacific.

As we have seen, the closing words of said section 23 of the act above quoted—the section under which the Southern Pacific claims the lands in question—are as follows:

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Company or any other railroad company."

Now, in view of the fact that this same act, in its preceding sections, had already declared that the "Texas Pacific" was thereby constituted an incorporated railroad company, and was granted certain lands, including

all the odd-numbered sections now in dispute, it is difficult to see how it would have been possible more clearly to except said lands from the operation of said grant to the Southern Pacific, than by providing that the latter grant should not "affect or impair the rights, present or prospective, of any other railroad company."

Appellant's counsel contend that the "Texas Pacific Railroad Company" is not embraced in the term "Any other railroad company," and in support of this contention one of said counsel in his brief cites the following authority: "In Sandinam v. Beach (7 Barn. & Cress. 96) it was held by Lord Tenterden, delivering the unanimous opinion of the Queen's Bench, that the Stat. 29, Car. 2, c. 7, that no tradesman, laborer, or other person or persons shall do or exercise any worldly labor, business, or work of ordinary calling upon the Lord's day, did not include the drivers of stage-coaches, because, where general words follow particular ones the rule is to construe them as applicable to persons ejus dem generis."

If the act of Congress under which the Southern Pacific Railroad Company claims its grant had been a penal statute, where every intendment must be taken most strongly against the Government, instead of a statute granting lands, where every intendment must be taken most strongly against the grantee, and in favor of the Government; and if "The Texas Pacific Railroad Company" (when so incorporated and so christened by act of Congress) lacked as much of being a railroad company as does the driver of a stage-coach lack of being either a "tradesman" or an "artificer," it might in that event be

logically contended that the above-quoted decision of the court of queen's bench was an authority in point in this case.

But it can scarcely be presumed that Congress, while in the very act of incorporating the Texas Pacific Railroad Company, and granting to it certain lands in order to enable it to work out the objects of its creation, could have intended to exclude it from the beneficial effects of a clause specifically declared to be for the protection of the rights of the Atlantic and Pacific Railroad Company "and all other railroad companies," against all claims of the Southern Pacific based upon section 23 of the aforesaid act.

Again: It is a recognized rule of construction, alike applicable both to statutes and to contracts, that where one construction will give force and effect to every part of a statute—or of a contract—while a different construction would produce a conflict between different parts thereof, the former construction must be adopted. And in this case it is clear that if we so construe said section 23 as to make it pass to the Southern Pacific Company any of the odd-numbered sections of land within the grant limits of the Texas Pacific, such a construction would bring said action into palpable conflict with section 9 of the same act, whereby all the odd-numbered sections within said limits were granted to the Texas Pacific. If, however, we give to said proviso embodied in section 23 its literal meaning as above suggested, no such conflict will be found; and all the parts of said act will stand in perfect harmony with each other.

After a careful consideration of the whole case, I am therefore of opinion that the action of the commissioner appealed from ought to be sustained.

Z. MONTGOMERY,
Assistant Attorney General.

Compd.
M. B. H. S. A. B.

Department of the Interior.

Washington, November 2, 1885.

To Hon. W. A. J. Sparks, Commissioner of the General Landoffice.

Sir: In the matter of the appeal of the Southern Pacific Railroad Company from your office decision of April 4, 1885, directing the local officers at Los Angeles, California, to be governed by instructions of March 17, 1885, directing them to give notice of the restoration of all lands theretofore withdrawn for the Texas and Pacific Railway and revoking your office letter of March 18, 1885, excluding from such restorations lands along the branch line of the Southern Pacific Railroad, where the same passes through lands withdrawn for said Texas and Pacific Railway, I have carefully considered the points presented by said appeal, and, for the reasons set forth in the foregoing opinion, the said decision appealed from is hereby affirmed. Papers returned herewith.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

[Endorsed]: United States Circuit Court, Ninth Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 11. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 12.

Articles of Association, Amalgamation, and Consolidation.

Made and executed this Seventeenth day of December, A. D. 1874, by and between the Southern Pacific Railroad Company, of the first part, and the Los Angeles and San Pedro Railroad Company, party of the second part, Witnesseth:

That whereas, the said party of the first part heretofore to wit, on the ninteenth day of August, A. D. 1873, was duly incorporated and organized under the law of the State of California by the amalgamation and consolidation of the following railroad corporations theretofore existing under laws of said State, to wit, The San Francisco and San Jose Railroad Company, The Santa Clara and Pajaro Railroad Company, The Southern Pacific Railroad Company, The California Southern Railroad Company, and The Southern Pacific Branch Railroad Company, all of said railroad companies being incorporated and duly organized under the laws of the State of California prior to the thirty-first day of December, A. D. 1872, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which, by virtue of the law of said State entitled, "An act to

provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto," approved May 20, 1861, whereby said corporation became duly incorporated and organized under the laws of said State for the purposes of purchasing, constructing, owning, maintaining, and operating, continuous lines of railroad from the city and county of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado river in the southeastern part of the State of California, a distance of six hundred and thirty-five and 87-100 miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and fifty-six and 7-100 miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last-named county, a distance of thirty-five and 1-10 miles, as near as may be, and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established. And also from a point on said road aforesaid, at or near Salinas City in the county of Monterey, southerly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad; also

from a point on the above-described line at or near San Miguel in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad running from Tehachapi Pass, by way of Los Angeles to Fort Yuma, said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads in the aggregate being, as near as may be, four hundred and two (402) miles in length;

And whereas, the said party of the second part was heretofore, to wit, on the eighteenth day of February, A. D. 1868, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, and maintaining and operating a railroad from a point in the city of Los Angeles, in the county of Los Angeles, State of California, to a point on or near the bay of San Pedro in said county, a distance of twenty and 5-10 miles;

And whereas, said parties believe a consolidation and amalgamation of their capital stock, debts, properties, assets, roads, telegraphs, lands and franchises will be mutually advantageous;

And whereas, more than three-fourths in value of the stockholders in interest of each of said parties have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth;

And whereas, all of the railroad corporations included in the several consolidations were duly incorporated prior to the 31st day of December, A. D. 1872:

Now, therefore, under and by virtue of the fortieth section of a law of the State of California, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto," approved May 20, 1861, and the several amendments thereto, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to wit:

Article First.

Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, title, privileges, claims, and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey, and vest the same in the said new corporation as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims, and charges thereon or in anywise affecting the same or any part thereof.

Article Second.

The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate

the several lines of railroad hereinbefore described, to wit: continuous lines of railroad from the city and county of San Francisco in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego to some point on the Colorado river, in the southeastern part of the State of California, a distance of six hundred and thirty-five and 87-100 miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and fifty-six and 7-10 miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas city, in said last-named county, a distance of thirty-five and 1-10 miles, as near as may be, and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And also from a point on said road aforesaid at or near Salinas City, in the county of Monterey, southerly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad; also from a point on the above-described line at or near San Miguel, in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad, running from Tehachapi Pass, by way of

Los Angeles, to Fort Yuma, said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara, and Los Angeles, and said roads in the aggregate being, as near as may be, four hundred and two miles in length; also from a point in the city of Los Angeles, in the county of Los Angeles, State of California, to a point on or near the bay of San Pedro in said county, a distance of twenty and one-half miles. The aggregate length of all of said railroads, being one thousand four hundred and forty-nine and fifty-four one-hundredths miles.

Article Third.

The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation hereafter to be adopted, viz: Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson, Nicholas T. Smith, Stephen T. Gage, and Joseph L. Willcutt.

Article Fourth.

The capital stock of said new corporation shall be ninety millions dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth.

Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new

corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth.

And the said several parties of the first and second parts, each for itself, hereby, sells, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation, its successors and assigns, forever, all its property, real, personal, and mixed, of every kind and description; all its capital stock; all its interest in the shares of its capital stock, subscribed but not fully paid up; all credits, effects, judgments, decrees, contracts, agreements, claims, dues, and demands of every kind and description, and all rights, privileges, and franchises, corporate and otherwise, held, owned, or claimed by said parties of the first and second parts or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims, and charges thereon, or in anywise affecting the same.

Article Seventh.

The said new and consolidated company and corporation is to be liable for and shall fulfill perform, do, and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts; but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof, from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its president and secretary and its corporate seal to be hereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary and its corporate seal hereunto affixed, in pursuance of orders and resolutions of their several boards of directors made on the seventeenth day of December, A. D. 1874.

SOUTHERN PACIFIC RAILROAD COMPANY.

[Corporate Seal] By CHAS. CROCKER,
President.

J. L. WILLCUTT,
Secretary.

LOS ANGELES AND SAN PEDRO RAILROAD COMPANY.

[Corporate Seal] By LELAND STANFORD,
President.

J. L. WILLCUTT,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Railroad Company, party of the first part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation and to the said new articles of association this seventeenth day of December, A. D. 1874.

CHAS. CROCKER.
S. T. GAGE.
N. T. SMITH.
DAVID D. COLTON.
E. H. MILLER, Jr.
J. L. WILLCUTT.
ROBERT ROBINSON,
MARK HOPKINS.
LELAND STANFORD.
C. P. HUNTINGTON.
By MARK HOPKINS,
Atty. in Fact.
CONTRACT & FINANCE CO.
By JNO. MILLER,
Secty.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Los Angeles and San Pedro Railroad Company, party of the second part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second

parts, hereby consent to such amalgamation and consolidation and to the said new articles of association, this seventeenth day of December, A. D. 1874.

LELAND STANFORD,
CHAS. CROCKER.
DAVID D. COLTON.
MARK HOPKINS.
C. P. HUNTINGTON.
By MARK HOPKINS,
Atty. in Fact.
ROBERT ROBINSON,
J. L. WILLCUTT.
CONTRACT & FINANCE CO.
By JNO. MILLER,
Secty.

State of California, Department of State.

I, E. G. Waite, secretary of State, of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, amalgamation, and consolidation of Southern Pacific R. R. Co. and Los Angeles and San Pedro R. R. Co. with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form, and by the proper officer.

Witness my hand and the great seal of State at office, Sacramento, California, the 23d day of April, A. D. 1894.

[Seal]

E. G. WAITE,
Secretary of State.

[Endorsed]: Plffs. Ex. 12. L. A. L. Articles of Association, amalgamation and consolidation of the Southern Pacific Railroad Company and Los Angeles and San San Pedro Railroad Company. [Endorsed]: Filed in the office of the secretary of State, Dec. 18, 1874. Drury Melone, Sec. State. By N. S. White. Recorded Book 9, page 354. Department of State, California.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al., No. 587. Plaintiffs' Exhibit No. 12. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiffs' Exhibit No. 4. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 13.

Articles of Association, Incorporation, Amalgamation, and Consolidation of the Southern Pacific Railroad Company, the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Pablo and Tulare Railroad Company, the San Pablo and Tulare Extension Railroad Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego

Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach Whittier and Los Angeles County Railroad Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company, and the Ramona and San Bernardino Railroad Company.

Articles of association, incorporation, amalgamation, and consolidation made and executed on the fourth (4th) day of May, 1888, by and between the Southern Pacific Railroad Company, party of the first part; the San Jose and Almaden Railroad Company, party of the second part; the Pajaro and Santa Cruz Railroad Company, party of the third part; the Monterey Railroad Company, party of the fourth part; the Monterey Extension Railroad Company, the party of the fifth part; the Southern Pacific Branch Railway Company, party of the sixth part; the San Pablo and Tulare Railroad Company, party of the seventh part; the San Pablo and Tulare Extension Railroad Company, party of the eighth part; the San Ramon Valley Railroad Company, party of the ninth part; the Stockton and Copperopolis Railroad Company, party of the tenth part; the Stockton and Tulare Railroad Company, party of the eleventh part; the San Joaquin Valley and Yosemite Railroad Company, party of the twelfth part; the Los Angeles and San Diego Railroad Company, party of the thirteenth part; the Los Angeles and Independence Railroad Company, party of the fourteenth part; the Long Beach, Whittier and Los Angeles County Railroad Company, party of the fifteenth part; the Long Beach Railroad Company, party of the sixteenth part;

the Southern Pacific Railroad Extension Company, party of the seventeenth part, and the Ramona and San Bernardino Railroad Company, party of the eighteenth part, witnesseth:

That whereas, the party of the first part, the Southern Pacific Railroad Company, is the owner of a line of railroad and franchises commencing in the city and county of San Francisco, in the State of California, and running thence through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado river, in the southeastern part of the State of California, a distance of six hundred and thirty-five and eighty-seven one hundredths miles, as near as may be; also, a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas and Pacific Railroad at or near the Colorado river, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation, and direct to be established; and also from a point on said road aforesaid at or near Salinas city in the county of Monterey, southerly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin division of the said

Southern Pacific Railroad; also from the above-described line at or near San Miguel, in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad running from Tehachapi Pass, by way of Los Angeles, to Fort Yuma; said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads in the aggregate being, as near as may be, four hundred and two miles in length; also, from a point in the city of Los Angeles to a point on or near the bay of San Pedro in said county, a distance of twenty-four and sixty-five one hundredths (24.65) miles; the aggregate length of all of said railroads being one thousand four hundred and fifty-four and thirty-two one hundredths miles;

And whereas, the party of the second part, the San Jose and Almaden Railroad Company, is the owner of a line of railroad commencing at or near Hillsdale on the line of the Southern Pacific Railroad, and running thence southerly and southeasterly to a point at or near the town of New Almaden, all in the county of Santa Clara, a distance of 7.8 miles, more or less;

And whereas, the party of the third part, the Pajaro and Santa Cruz Railroad Company, is the owner of a line of railroad commencing at or near the town of Pajaro, in the county of Monterey, and running thence in a general northerly and northwesterly direction to a point at or near the town of Santa Cruz, in the county of Santa Cruz, a distance of 21.2 miles, more or less; also commencing at or near Aptos, in said county of Santa Cruz, and running

thence northerly and northeasterly for a distance of five miles, more or less—the estimated length of said railroad and branch being 26.2 miles, more or less;

And whereas, the party of the fourth part, the Monterey Railroad Company, is the owner of a line of railroad commencing at or near Castroville station, in the county of Monterey, there connecting with the Southern Pacific Railroad, and running thence in a general southwesterly direction to a point at or near Monterey, in said county, a distance of fifteen and twelve hundredths miles, more or less;

And whereas, the party of the fifth part, the Monterey Extension Railroad Company, was heretofore, to wit, on the fifth day of January, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a line of railroad commencing at or near the city of Monterey, there connecting with the Monterey Railroad, and running thence in a general northwesterly direction to a point at or near Pacific Grove Retreat; thence in a general southwesterly direction to a point at or near the mouth of the Carmel river, all in the county of Monterey, a distance of sixteen miles, more or less;

And whereas, the party of the sixth part, the Southern Pacific Branch Railway Company, was heretofore, to wit, on the tenth day of April, 1886, duly incorporated and organized under the laws of the State of California for the purpose of owning, constructing, maintaining, and operating a line of steam railroad in the counties of San

Luis Obispo, Santa Barbara, Ventura, and Los Angeles, commencing at a point at or near San Miguel in the county of San Luis Obispo, there connecting with the Southern Pacific Railroad, and running thence in a general southeasterly direction through and into the aforesaid counties to a connection with said Southern Pacific Railroad at or near Saugus, in Los Angeles county, a distance of two hundred and fifty miles, more or less;

And whereas, the party of the seventh part, the San Pablo and Tulare Railroad Company is the owner of a line of railroad commencing at or near the town of Martinez, in the county of Contra Costa, and running thence in a general southeasterly direction through the county of Alameda to a point at or near the town of Tracy, in the county of San Joaquin, a distance of 47.58 miles, more or less;

And whereas, the party of the eighth part, the San Pablo and Tulare Extension Railroad Company, was heretofore, to wit, on the fifth day of February, 1887, duly incorporated and organized under the laws of the State of California for the purpose of owning, constructing, maintaining, and operating a line of steam railroad commencing at or near the town of Tracy, in the county of San Joaquin, there connecting with the San Pablo and Tulare Railroad, and running thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare, to a connection with the Southern Pacific Railroad at or near Pampa, in the county of Kern, a distance of two hundred and sixty miles, more or less;

And whereas, the party of the ninth part, the San Ramon Valley Railroad Company, was heretofore, to wit, on the twenty-third day of April, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of owning, maintaining, and operating a line of railroad commencing at a point on the line of the San Pablo and Tulare Railroad at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five miles, more or less;

And whereas, the party of the tenth part, the Stockton and Copperopolis Railroad Company, is the owner of a line of railroad commencing at or near the town of Stockton, in the county of San Joaquin, and running thence in a general easterly direction to a point at or near Milton, in the county of Calaveras; also, commencing at or near Peters, in the county of San Joaquin, and running thence southeasterly to a point at or near Oakdale, in the county of Stanislaus, a distance of 44.37 miles, more or less;

And whereas, the party of the eleventh part, the Stockton and Tulare Railroad Company, was heretofore, to wit, on the twenty-sixth day of November, 1887, duly incorporated and organized under the laws of the State of California for the purpose of constructing, owning, maintaining, and operating a line of steam railroad with branches thereto as follows: The main line of said railroad commencing at or near Oakdale, in the county of Stanislaus, there connecting with the Stockton and Copperopolis Railroad, and running thence in a general southeasterly direc-

tion through and into the county of Stanislaus, Merced, Fresno and Tulare, there connecting with the line of the Southern Pacific Railroad at or near the town of Poso, in Kern county, a distance of two hundred miles, more or less; the branches to said road are as follows:

First.—Commencing at or near the town of Modesto, in the county of Stanislaus, there connecting with the Central Pacific Railroad, and running thence in an easterly direction to a connection with the aforesaid main line, a distance of sixteen miles, more or less.

Second.—Commencing at or —— Merced, in the county of Merced, there connecting with said Central Pacific Railroad, and running thence easterly to a connection with the aforesaid main line, a distance of ten miles, more or less.

Third.—Commencing at or near Sycamore, in the county of Fresno, there connecting with the line of said Central Pacific Railroad, and running thence easterly to a connection with aforesaid main line, a distance of ten miles, more or less.

Fourth.—Commencing at or near Fresno, in the county of Fresno, there connecting with the main line of said Central Pacific Railroad, and running thence in a general easterly direction to a connection with the aforesaid main line, a distance of ten miles, more or less.

Fifth.—Commencing at or near Tulare, in the county of Tulare, there connecting with the line of the Southern Pacific Railroad, and running thence in a general easterly direction to a connection with aforesaid main line, a distance of sixteen miles, more or less.

Said main line and branches being two hundred and sixty-two miles in length, more or less;

And whereas, the party of the twelfth part, the San Joaquin Valley and Yosemite Railroad Company, was heretofore, to wit, on the twelfth day of February, 1886, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, maintaining and operating a line of railroad commencing at a point on the line of the Southern Pacific Railroad at or near Berenda station, in Fresno county, and running thence northeasterly to a point at or near Perry's ranch, in said county, a distance of twenty-five miles, more or less;

And whereas, the party of the thirteenth part, the Los Angeles and San Diego Railroad Company, was heretofore, to wit, on the ninth day of October, 1876, duly incorporated and organized under the laws of the State of California for the purpose of constructing, owning, maintaining and operating a line of railroad and telegraph commencing at or near the city of Los Angeles, in the county of Los Angeles, and running thence in a southeasterly direction to the town of Anaheim, in said county, and thence in a southeasterly direction through said counties of Los Angeles and San Diego to a point at or near the city of San Diego, in said last-mentioned county, a distance of one hundred and forty miles, more or less;

And whereas, the party of the fourteenth part, the Los Angeles and Independence Railroad Company, is the owner of a line of railroad, commencing at or near the city of Los Angeles and running thence westerly to Santa Mon-

ica, in said county, a distance of eighteen fifty one-hundredths miles, more or lesss;

And whereas, the party of the fifteenth part, the Long Beach Whittier and Los Angeles County Railroad Company, was heretofore, to wit, on the fifteenth day of December, 1887, duly incorporated and organized under the laws of the State of California for the purpose of constructing, owning, maintaining, and operating a line of railroad, commencing at or near Long Beach, in the county of Los Angeles, and running thence in a general northeasterly direction to Whittier, thence northwesterly to Ramona, a distance of thirty miles, more or less; also commencing at Los Angeles and running thence in an easterly direction to a point on the main line of the Southern Pacific Railroad between El Monte and Puente, and thence in a northeasterly direction to a point on or near San Dimos creek, a distance of thirty miles, more or less, all in said county of Los Angeles, and aggregating sixty miles in length, more or less;

And whereas, the party of the sixteenth part, the Long Beach Railroad Company, was heretofore, to wit, on the 28th day of October, 1887, duly incorporated and organized under the laws of the State of California for the purpose of constructing, maintaining, and operating a line of steam railroad in the county of Los Angeles, commencing at a point at or near Long Beach Junction on the line of the Los Angeles and San Pedro Railroad, in said county, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four miles, more or less;

And whereas, the party of the seventeenth part, the Southern Pacific Railroad Extension Company, was heretofore, to wit, on the twentieth day of February, 1888, duly incorporated and organized under the laws of the State of California for the purpose of purchasing, constructing, owning, maintaining, and operating a line of railroad commencing at the end of the constructed line of the Southern Pacific Railroad between the towns of Wilmington and San Pedro, in the county of Los Angeles, and running thence in a general southerly direction through said town of San Pedro to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor Dock and Land Association to the westerly boundary of said land, all in the county of Los Angeles, and being five miles in length, more or less;

And whereas, the party of the eighteenth part, the Ramona and San Bernardino Railroad Company, was heretofore, to wit, on the twenty-fourth day of April, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, and operating a line of railroad at or near Ramona, in Los Angeles county, to a point at or near Crafton, in the county of San Bernardino, a distance of 71 miles, more or less;

And whereas, said parties, and all of them, now are, and ever since their organization and incorporation have been, railroad corporations duly and lawfully organized and existing as such under the laws of the State of California, relating to the formation and existence of railroad corporations;

And whereas, said respective parties believe that a consolidation and amalgamation of their capital stocks, their debts, properties, assets and franchises will be mutually advantageous;

And whereas, the respective boards of directors of said corporations, parties hereto, have agreed upon the consolidation and amalgamation of said corporations, their debts, properties, assets, and franchises in the following manner, to wit:

First.—That the said amalgamation and consolidation shall be made at once, and that the name and style of the amalgamated and consolidated corporation shall be

"Southern Pacific Railroad Company."

That it shall continue in existence for a period of fifty years from the date of these articles.

Second.—That the several capital stocks, debts, properties, assets, and franchises, held, owned, or possessed, by each of said corporations, shall be vested in said amalgamated and consolidated corporation, the Southern Pacific Railroad Company, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all the conditions, stipulations, contracts, liens, claims, and charges thereon, and to all debts of said respective corporations.

Third.—That the object and purposes, the capital stock, the board of directors, and the principal place of business shall be as expressed in the articles of incorporation hereinafter set out.

Fourth.—That the stockholders of each of said corporations, parties hereto, shall have issued to them the same

number of shares of stock of the capital stock of the amalgamated and consolidated corporation as they own and hold of the capital stock of the respective corporations of which they are members, and upon the same terms and conditions;

And whereas, the holders of more than three-fourths in value of all the stock of each of said respective corporations, parties hereto, have given written consent to the amalgamation and consolidation of said corporations in the manner agreed upon as aforesaid by their respective boards of directors, and for the purposes expressed in the articles of incorporation following:

Now, therefore, know all men by these presents, that the parties hereto, in pursuance of the laws of the State of California, in such cases made and provided, do hereby amalgamate and consolidate their capital stock, debts, properties, assets, and franchises for the uses and purposes aforesaid, and do hereby vest the same in the said consolidated and amalgamated corporation, the Southern Pacific Railroad Company, and in pursuance of said consolidation and amalgamation, and in order more fully to carry the same into force and effect, do hereby adopt the following articles of incorporation:

I.

The name of said amalgamated and consolidated corporation shall be

"Southern Pacific Railroad Company."

II.

The object and purpose of said amalgamated and consolidated corporation shall be to construct, own, operate,

and maintain lines of steam railroad and telegraph within the State of California, and to carry passengers and freights on and over said lines of railroad for hire.

III.

The kinds of railroads to be owned and operated are single and double track steam railroads, having either a standard gauge or narrow gauge.

IV.

The places to and from which said lines of railroad are to run are as follows:

First.—Commencing at the city and county of San Francisco, in the State of California, and running thence through the city and county of San Francisco, the counties of San Mateo, Santa Clara, San Benito, Monterey, Fresno, Tulare, Kern and San Bernardino, by way of Mojave, to Needles, on the Colorado river, in the county of San Bernardino, State of California, a distance of six hundred and thirty-five and eighty-seven one hundredths miles, as near as may be.

Also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to Yuma, in the county of San Diego, a distance of three hundred and fifty-six and seven tenths miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz, San Benito, and Monterey, to a point at or near Salinas City, in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; and also from a point on said road aforesaid, at

or near Salinas City, in the county of Monterey, southerly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin Division of the said Southern Pacific Railroad, said road passing into or through the counties of Monterey, San Luis Obispo and Kern, and being as near as may be, two hundred miles in length; also commencing at or near Hillsdale, in Santa Clara county, and running thence to a point at or near New Almaden, in Santa Clara county, a distance of 7.8 miles, more or less; the aggregate length of all of said railroads being one thousand two hundred and thirty-five and forty-seven one hundredths miles.

Second.—Commencing at or near San Miguel, in the county of San Luis Obispo, and running thence southerly through the counties of San Luis Obispo, Santa Barbara, Ventura, and Los Angeles, to a point at or near Saugus, in Los Angeles county, on the line of the Southern Pacific Railroad, a distance of two hundred and fifty miles, more or less.

Also commencing at or near Castroville, in Monterey county, and running thence southwesterly to a point at or near Monterey, thence northeasterly to Pacific Grove Retreat, and thence southwesterly to a point at or near the mouth of the Carmel river, a distance of 31.12 miles, more or less, and all in the county of Monterey.

Also commencing at or near Pajaro in Monterey county, and running thence northerly and northwesterly to a point at or near Santa Cruz, in Santa Cruz county, a distance of 21.2 miles, more or less.

Also commencing at or near Aptos, in Santa Cruz county, and running thence northerly and northeasterly to a point at or near Loma Prieta in the same county, a distance of five miles, more or less, aggregating 307.32 miles, more or less.

Third.—Commencing at or near Martinez, in Contra Costa county, and running easterly and southeasterly through the county of Alameda, via Antioch, to a point at or near Tracy, in San Joaquin county, and thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare, to a connection with the Southern Pacific Railroad at or near Pampa, in the county of Kern, a distance of 307.58 miles, more or less.

Fourth.—Commencing at or near the city of Stockton and running thence easterly and northeasterly to or near Milton, in the county of Calaveras, a distance of 25.68 miles, more or less.

Also commencing at or near Peters, in the county of San Joaquin, and running thence in a southeasterly direction through the counties of Stanislaus, Merced, Fresno, Tulare, to a connection with the Southern Pacific Railroad at or near Poso, in Kern county, a distance of 218.69 miles, more or less, with a branch from said last-mentioned line westerly to or near Modesto, in Stanislaus county, a distance of about sixteen miles, a branch westerly to a point on Central Pacific Railroad at or near Merced, in Merced county, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Sycamore, in Fresno county, a dis-

tance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Fresno, in Fresno county, a distance of about ten miles, and a branch westerly to a connection with the Southern Pacific Railroad at or near Tulare, in Tulare county, a distance of about fifteen miles, aggregating in all 306.37 miles, more or less.

Fifth.—Commencing at or near Berenda, in the county of Fresno, running thence northeasterly to a point at or near Perry's ranch in said county, a distance of twenty-five miles, more or less.

Sixth.—Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southeasterly to Anaheim and Santa Ana, in said county, and thence southeasterly through the counties of Los Angeles and San Diego to a point at or near the city of San Diego, a distance of 140 miles, more or less.

Seventh.—Commencing at or near Los Angeles, in the county of Los Angeles, and running thence northwesterly to Santa Monica, a distance of 18.50 miles, more or less.

Eighth.—Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southwesterly to San Pedro, thence to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor Dock and Land Association to a point at or near the westerly boundary of said lands, all in said county of Los Angeles, and being 29.65 miles in length, more or less.

Ninth.—Commencing at or near Long Beach, in the county of Los Angeles, and running thence in a general northeasterly direction to Whittier, thence northwesterly

to a point at or near Ramona. Also commencing at or near Los Angeles, running thence easterly to a point on the main line of the Southern Pacific Railroad between El Monte and Puente, and thence in a northeasterly direction to a point on or near San Dimos creek; all in said county of Los Angeles, and being sixty miles in length, more or less.

Tenth.—Commencing at or near Long Beach Junction, in the county of Los Angeles, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line between the Rancho Los Cerritos and Rancho Los Alamitos, in the county of Los Angeles, a distance of four miles, more or less.

Eleventh.—Commencing at or near Ramona, in Los Angeles county, and running thence to a point at or near Crafton, in the county of San Bernardino, a distance of seventy-one miles, more or less.

Twelfth.—Commencing at a point on the line of the San Pablo and Tulare Railroad at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad, at or near Pleasanton, in the county of Alameda, a distance of thirty-five miles, more or less.

Said lines of railroad lying all within the State of California, and being composed of the lines of the several railroads hereinbefore mentioned and described. Together with such other and further appendages and adjuncts, including branches and spur tracks, in the counties hereinbefore named, or in one or more thereof, as the board of directors of said consolidated and amalgamated company may direct from time to time.

V.

The estimated length of said railroad and its branches in the aggregate is two thousand five hundred and thirty-nine and eighty-nine one hundredths (2,539.89) miles, as near as may be.

VI.

The place where the principal business of said corporation is to be transacted is the city and county of San Francisco, State of California.

VII.

The term for which said corporation is to exist is fifty years from the date hereof.

VIII.

The number of directors of said corporation is to be seven, and the names and residence of those appointed for the first year are as follows:

Names.	Residence.
Chas. F. Crocker,	San Francisco, California.
Timothy Hopkins,	San Mateo County, California.
Charles Mayne,	San Francisco, California.
W. V. Huntington,	San Francisco, California.
N. T. Smith,	San Francisco, California.
J. L. Willcutt,	Oakland, California.
A. N. Towne,	San Francisco, California.

IX.

The capital stock of said corporation is to be one hundred and forty-two million nine hundred and ninety thousand (142,990,000) dollars, divided into one million, four hundred and twenty-nine thousand nine hundred (1,429,900) shares, of the par value of one hundred dollars each.

X.

The amount of the capital stock actually subscribed in each of said corporations, parties hereto, at the time of their formation, and the names of the persons by whom the same was subscribed and the number of shares subscribed to, and then held by each, was as set out in the original articles of incorporation of the several companies now consolidated and amalgamated, and the same was, and now is, more than one thousand dollars per mile for each mile of each of said roads.

XI.

That the capital stock of each of said corporations there had at the time of their formation (where the same was required by law) been actually paid to the respective treasurers thereof, the amounts specified in their original articles of incorporation verified by the affidavits attached to the copies thereof, filed in the office of secretary of State, of the State of California, and the amounts so paid in were in each case ten per cent of the subscribed capital stock.

In witness whereof, the said parties have caused these presents to be signed by their respective presidents or vice-presidents and secretaries, and their corporate seals to be hereunto affixed, pursuant to resolutions of their respective boards of directors, this fourth (4th) day of May, A. D. 1888.

[Seal] CHAS. CROCKER,

President Southern Pacific Railroad Company.

J. L. WILLCUTT,

Secretary Southern Pacific Railroad Company.

[Seal] CHAS. F. CROCKER,
President San Jose & Almaden Railroad Company.
J. L. WILLCUTT,
Secretary San Jose & Almaden Railroad Company.
[Seal] CHAS. F. CROCKER,
President Pajaro & Santa Cruz Railroad Company.
J. L. WILLCUTT,
Secretary Pajaro & Santa Cruz Railroad Company.
[Seal] CHAS. CROCKER,
President Monterey Railroad Company.
J. L. WILLCUTT,
Secretary Monterey Railroad Company.
[Seal] CHAS. F. CROCKER,
President Monterey Extension Railroad Company.
J. L. WILLCUTT,
Secretary Monterey Extension Railroad Company.
[Seal] CHAS. F. CROCKER,
President Southern Pacific Branch Railway Company.
J. L. WILLCUTT,
Secretary Southern Pacific Branch Railway Company.
[Seal] CHAS. CROCKER,
Vice-president San Pablo & Tulare Railroad Company.
W. V. HUNTINGTON,
Secretary San Pablo & Tulare Railroad Company.
[Seal] CHAS. F. CROCKER,
President San Pablo & Tulare Extension Railroad Company.
W. V. HUNTINGTON,
Secretary San Pablo & Tulare Extension Railroad Company.

[Seal] JAS. P. BROWN,
President San Ramon Valley Railroad Company.
D. D. STUBBS,
Secretary San Ramon Valley Railroad Company.
[Seal] CHAS. F. CROCKER,
Vice-president Stockton & Copperopolis Railroad Company.
W. V. HUNTINGTON,
Secretary Stockton & Copperopolis Railroad Company.
[Seal] CHAS. F. CROCKER,
Vice-president Stockton & Tulare Railroad Company.
W. V. HUNTINGTON,
Secretary Stockton & Tulare Railroad Company.
[Seal] CHAS. F. CROCKER,
President San Joaquin Valley & Yosemite Railroad Company.
W. V. HUNTINGTON,
Secretary San Joaquin Valley & Yosemite Railroad Company.
[Seal] CHAS. F. CROCKER,
President Los Angeles & San Diego Railroad Company.
J. L. WILLCUTT,
Secretary Los Angeles & San Diego Railroad Company.
[Seal] CHAS. F. CROCKER,
President Los Angeles & Independence Railroad Company.
F. S. DOUTY,
Secretary Los Angeles & Independence Railroad Company.

[Seal] CHAS. F. CROCKER,
President Long Beach, Whittier & Los Angeles Railroad Railroad Company.
W. V. HUNTINGTON,
Secretary Long Beach, Whittier & Los Angeles County Railroad Company.
[Seal] CHAS. F. CROCKER,
President Long Beach Railroad Company.
F. S. DOUTY,
Secretary Long Beach Railroad Company.
[Seal] CHAS. CROCKER,
President Southern Pacific Railroad Extension *Railroad* Company.
J. L. WILLCUTT,
Secretary Southern Pacific Railroad Extension Company.
[Seal] G. L. LANSING,
President Ramona & San Bernardino Railroad Company.
C. E. GREEN,
Secretary Ramona & San Bernardino Railroad Company.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the sec-

retary, of the Southern Pacific Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California, }
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the San Jose and Almaden Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Pajaro and Santa Cruz Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and annexed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Monterey Railroad Company that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Monterey Extension Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me,

E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Southern Pacific Branch Railway Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the vice-president, and W. V. Huntington, known to me to be the secretary, of the San Pablo and Tulare Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and

affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and W. V. Huntington, known to me to be the secretary, of the San Pablo and Tulare Extension Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and

county of San Francisco, duly commissioned and qualified, personally appeared Jas. P. Brown, known to me to be the president, and D. D. Stubbs, known to me to be the secretary, of the San Ramon Valley Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the vice-president, and W. V. Huntington, known to me to be the secretary, of the Stockton and Copperopolis Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the vice-president, and W. V. Huntington, known to me to be the secretary, of the Stockton and Tulare Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and W. V. Huntington, known to me to be the secretary, of the San Joaquin Valley and Yosemite Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Los Angeles and San Diego Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco.) ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and

county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and F. S. Douty, known to me to be the secretary, of the Los Angeles and Independence Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and W. V. Huntington, known to me to be the secretary, of the Long Beach, Whittier, and Los Angeles County Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and F. S. Douty, known to me to be the secretary, of the Long Beach Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Southern Pacific Railroad Extension Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California, }
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared G. L. Lansing, known to me to be the president, and Chas. E. Green, known to me to be the secretary, of the Ramona and San Bernardino Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Railroad Company, party of the first part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and con-

solidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.
W. V. HUNTINGTON.
J. L. WILLCUTT.
C. P. HUNTINGTON.
TIMOTHY HOPKINS.
CHAS. CROCKER.
A. N. TOWNE.
[S. P. Co. Seal] SOUTHERN PACIFIC COMPANY.
By G. L. LANSING, Secretary.
N. T. SMITH.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY, Secretary.
LELAND STANFORD,
By ARIEL LATHROP,
Atty. in fact.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Jose and Almaden Railroad Company, party of the second part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe

to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.
J. L. WILLCUTT.
N. T. SMITH.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
ARIEL LATHROP.
A. C. BASSETT.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Pajaro and Santa Cruz Railroad Company, party of the third part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.
N. T. SMITH.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. DOUTY,
Secretary.
A. C. BASSETT.
TIMOTHY HOPKINS.
J. L. WILLCUTT.
C. E. GREEN.
S. T. GAGE.
CREED HAYMOND.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Monterey Railroad Company, party of the fourth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.

W. V. HUNTINGTON.

J. L. WILLCUTT.

[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,

By F. S. DOUTY,

Secretary.

C. P. HUNTINGTON.

TIMOTHY HOPKINS.

CHAS. CROCKER.

N. T. SMITH.

LELAND STANFORD.

By ARIEL LATHROP,

Atty. in fact.

Mrs. M. F. S. SEARLES,

By TIMOTHY HOPKINS,

Atty. in fact.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Monterey Extension Railroad Company, party of the fifth part to the foregoing articles of amalgama-

tion and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.
W. V. HUNTINGTON.
TIMOTHY HOPKINS.
CHAS. CROCKER.
N. T. SMITH.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Branch Railway Company, party of the sixth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 188.

CHAS. F. CROCKER.
W. V. HUNTINGTON.
W. E. BROWN.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
TIMOTHY HOPKINS.
J. L. WILLCUTT.
N. T. SMITH.
S. T. GAGE.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Pablo and Tulare Railroad Company, party of the seventh part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[W. D. Co. Seal] WESTERN DEVELOPMENT CO.
By F. S. DOUTY,
President.
CHAS. F. CROCKER.
TIMOTHY HOPKINS.
C. P. HUNTINGTON.
LELAND STANFORD.
By ARIEL LATHROP,
Atty. in fact.
W. V. HUNTINGTON.
CHAS. CROCKER.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Pablo and Tulare Extension Railroad Company, party of the eighth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stock-

holders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.
TIMOTHY HOPKINS.
W. V. HUNTINGTON.
W. E. BROWN.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
C. E. GREEN.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Ramon Valley Railroad Company, party of the ninth part, to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

A. J. TREAT.
G. L. LANSING.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
D. D. STUBBS.
JAS. P. BROWN.
W. L. BROWN.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Stockton and Copperopolis Railroad Company, party of the tenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

W. E. BROWN.
CHAS. F. CROCKER.
TIMOTHY HOPKINS.
C. P. HUNTINGTON.
W. V. HUNTINGTON.
E. H. PARDEE.
N. T. SMITH.
LELAND STANFORD,
By ARIEL LATHROP,
Attorney in fact.
Mrs. M. F. S. SEARLES,
By TIMOTHY HOPKINS,
Atty. in fact.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Stockton and Tulare Railroad Company, party of the eleventh part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to

the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

W. E. BROWN.
LELAND STANFORD,
By ARIEL LATHROP,
Atty. in fact.
CHAS. F. CROCKER.
TIMOTHY HOPKINS.
W. V. HUNTINGTON.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Joaquin Valley and Yosemite Railroad Company, party of the twelfth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.
TIMOTHY HOPKINS.
W. V. HUNTINGTON.
S. T. GAGE.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
C. E. GREEN.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Los Angeles and San Diego Railroad Company, party of the thirteenth part, to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

[W. D. Co. Seal] WESTERN DEVELOPMENT CO.,
By F. S. DOUTY,
President.

C. P. HUNTINGTON.
TIMOTHY HOPKINS.
CHAS. CROCKER.
J. L. WILLCUTT.
N. T. SMITH.
LELAND STANFORD,
By ARIEL LATHROP,
Atty. in fact.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Los Angeles and Independence Railroad Company, party of the fourteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said

amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

[W. D. Co. Seal] WESTERN DEVELOPMENT CO.,
By F. S. DOUTY,
President.

C. P. HUNTINGTON.
W. V. HUNTINGTON.
TIMOTHY HOPKINS.
F. S. DOUTY.
CHAS. CROCKER.
LELAND STANFORD,
By ARIEL LATHROP,
Attorney in fact.
CHAS. F. CROCKER.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Long Beach, Whittier, and Los Angeles County Railroad Company, party of the fifteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles

of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

LELAND STANFORD,
By ARIEL LATHROP,
Atty. in fact.
CHAS. F. CROCKER.
W. V. HUNTINGTON.
TIMOTHY HOPKINS.
W. E. BROWN.
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. DOUTY,
Secretary.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Long Beach Railroad Company, party of the sixteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
F. S. DOUTY.
TIMOTHY HOPKINS.
W. E. BROWN.
C. E. GREEN.
CHAS. F. CROCKER.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Railroad Extension Company, party of the seventeenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. DOUTY,
Secretary.
TIMOTHY HOPKINS.
W. V. HUNTINGTON.
CHAS. CROCKER.
W. E. BROWN.
LELAND STANFORD,
By ARIEL LATHROP,
Atty. in fact.

This is to certify that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Ramona and San Bernardino Railroad Company, party of the eighteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stock-

holders, subscribe to the foregoing articles of association, incorporation, amalgamation, and consolidation.

Done this fourth day of May, 1888.

G. L. LANSING.
C. E. GREEN.
JAS. P. BROWN.
CHAS. G. LATHROP.
FREDK. MADGE.

State of California,
City and County of San Francisco. } ss.

I, WM. J. RUDDICK, county clerk of the city and county of San Francisco, State of California, hereby certify the foregoing to be a full, true, and correct copy of the original articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden and sixteen other railroad companies, filed in my office on the twelfth (12th) day of May, A. D. 1888.

Attest my hand and my official seal this twelfth day of May, A. D. 1888.

[Seal]

WM. J. RUDDICK,
County Clerk.
By Wm. A. Davies,
Deputy County Clerk.

State of California, Department of State.

I, E. G. Waite, secretary of State, of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden and sixteen other railroad companies with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentification is in due form and by the proper officer.

Witness my hand and the great seal of State, at office in Sacramento, California, the twenty-fourth day of April, A. D. 1894.

[Seal] E. G. WAITE,
Secretary of State.
By Wm. H. Stevens,
Deputy.

[Endorsed]: Plffs. Ex. 13. L. A. L. Articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden and sixteen other railroad companies. Dated May 4th, 1888. (Endorsed:) Filed in the office of the county clerk of the city and county of San Francisco, State of California, this 12 day of May, A. D. 1888. Wm.

J. Ruddick, County Clerk. By Wm. A. Davies, Deputy Clerk. Department of State, California. Filed in the office of the secretary of State, the 14th day of May, A. D. 1888. W. C. Hendricks, Secretary of State. By H. B. Davidson, Deputy. Record Book, 65, page 90.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al., No. 587. Plaintiff's Exhibit No. 13. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al., No. 600. Plaintiffs' Exhibit No. 5. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

W. W. B.

A. M.

E. H. H.

Defendants' Exhibit No. 9A.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Aug. 15, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original, with its endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal of Department of the Interior.]

WM. H. SIMS.
Acting Secretary of the Interior.

E. W.

Office of the Southern Pacific R. R. Co.,

No. 54 William Street,

New York, March 22, 1871.

Hon. C. Delano, Secretary of the Interior, Washington, D. C.

Sir: Herewith find a map of the general route of the Southern Pacific Railroad, of California, as near as may be, authorized by the 23d section of an act of Congress, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," approved March 3, 1871, as adopted by the said Southern Pacific Railroad Company, of California, from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river.

Will you please file the map in the office of the commissioner of the general landoffice in the department of the interior and cause the lands to be withdrawn from pre-

emption, entry, and sale along the line of said road according to the provisions of said act of Congress?

I have the honor to be, very respectfully,

Your obedient servant,

CHAS. CROCKER,

President Southern Pacific Railroad Co.

[Endorsements]: Southern Pacific, Department of the Interior. Received March 24, 1871. Dated March 22, 1871. From Charles Crocker, Pres. Southern Pac. R. R. Co., 54 William St., N. Y. Subject. Files map, and asks for withdrawal of lands along the line of said road from Tehachapi Pass, by Los Angeles, to the Texas Pac. R. R., near the Colorado river. Action. March 27, '71, asked whether the Co. had conformed to State law. Directed Comr. G. L. O. to withdraw lands and so advised Mr. Crocker. April 3, '71. Registered 1, 310. Filed ———.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 31A," in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, and "Defendants' Exhibit No. 9A," in the case entitled The United States of America, Complainants, vs.

The Southern Pacific Railroad Company, et al., Defendants, No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit 9A. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 31A. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 9B.

A. M.
E. H. H.
W. W. B.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Aug. 15, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

[Seal of Department of the Interior.]

WM. H. SIMS,
Acting Secretary of the Interior.

E. W.

Department of the Interior.

Washington, D. C., April 3, 1871.

Sir: The 23d section of the act to incorporate the Texas Pacific Railroad, and for other purposes, approved March 3, 1871, authorizes "the Southern Pacific Railroad Company to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river," with the same rights and privileges, and subject to the same limitations and restrictions as were granted to said Southern Pacific Railroad Company, of California, by the act July 27, 1866.

The accompanying map designating the route of said road from Tehachapi Pass, by way of Los Angeles, to the Colorado river, has been filed by Charles Crocker, Esq., president of the company, with a request that the lands may be withdrawn, as provided in the 12th section of said act, "from pre-emption, private entry, and sale."

You will issue the necessary order for a withdrawal of the lands, within twenty miles, and along the route designated on said map.

Very respectfully,

Your ob't servant,

WALTER H. SMITH,

Acting Secretary.

Hon. Willis Drummond, Commissioner of the General Landoffice.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 31B" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 600, and "Defendants' Exhibit No. 9B" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal]

WM. M. VAN DYKE,

Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co., et al. No. 587. Defendants' Exhibit No. 9B. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 31B. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 29.

Defts. Ex. 256. Longley.

F. W. J. M.

S. S. M. (4-207a.)

Department of the Interior.

General Landoffice,

Washington, D. C., Aug 8, 1895.

I, E. F. Best, acting commissioner of the general landoffice, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal] E. F. BEST,

Acting Commissioner of General Landoffice.

[Endorsed]: U. S. vs. S. P. Co. No. 600. Defendants' Exhibit No. 256. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Department of the Interior.

General Landoffice,

April 21, 1871.

Register and Receiver, Visalia, California.

Gentlemen: By act of March 3, 1871, sec. 23, the Southern Pacific Railroad Co. is authorized to construct a railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado river, with the same grant of lands, etc., as were granted to said company by act of 27th July, 1866.

The company having filed a diagram designated the general route of said road, I herewith transmit a map showing thereon that part of the line falling in your district together with the 20 and 30 mile limits of the grant to the line of withdrawal by corresponding limits for the Southern Pacific road under the act of 1866, and you are hereby directed to withhold from sale or location, pre-emption, or homestead entry all the odd-numbered sections falling within those limits.

The even-numbered sections within the limit of 20 miles you will increase in price to $2.50 per acre, and will dispose of them at that price, but only under the pre-emption and homestead laws.

When pre-emption or homestead entries may have had legal inception prior to the receipt of this order, the settlers may, of course, prove their claims, either upon odd or even numbered sections at the rate of $1.25 per acre.

The even-numbered sections between the 20 and 30 mile or indemnity limits are not affected by this communication.

This order will take effect from the date of its receipt by you, and you will please acknowledge receipt by date.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

[Endorsed]: U. S. vs. S. P. R. R. Co. No. 587. Defendants' Exhibit No. 29. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. vs. S. P. Co. No. 600. Defendants' Exhibit No. 311. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 30.

Department of the Interior.

General Land Office,

April 21st, 1871.

Register and Receiver, Los Angeles, California.

Gentlemen: By act of March 3, 1871, sec. 23, the Southern Pacific Railroad Co. is authorized to construct a railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same grant of lands, etc., as were granted to said company by act of July 27, 1866.

The company having filed a diagram designating the general route of said road, I herewith transmit a map showing thereon the line of route, as also the 20 and 30

mile limits of the grant to the line of withdrawal for the Southern Pacific road, under the act of 1866, and you are hereby directed to withhold from sale or location, pre-emption, or homestead entry all the odd-numbered sections falling within those limits.

The even-numbered sections within the limit of 20 miles you will increase in price to $2.50 per acre, and will dispose of them at that price, but only under the pre-emption and homestead laws.

When pre-emption or homestead entries may have had legal inception prior to the receipt of this order, the settlers may of course prove their claims either upon odd or even-numbered sections at the rate of $1.25 per acre.

This order will take effect from the date of its receipt by you, and you will please acknowledge receipt by date.

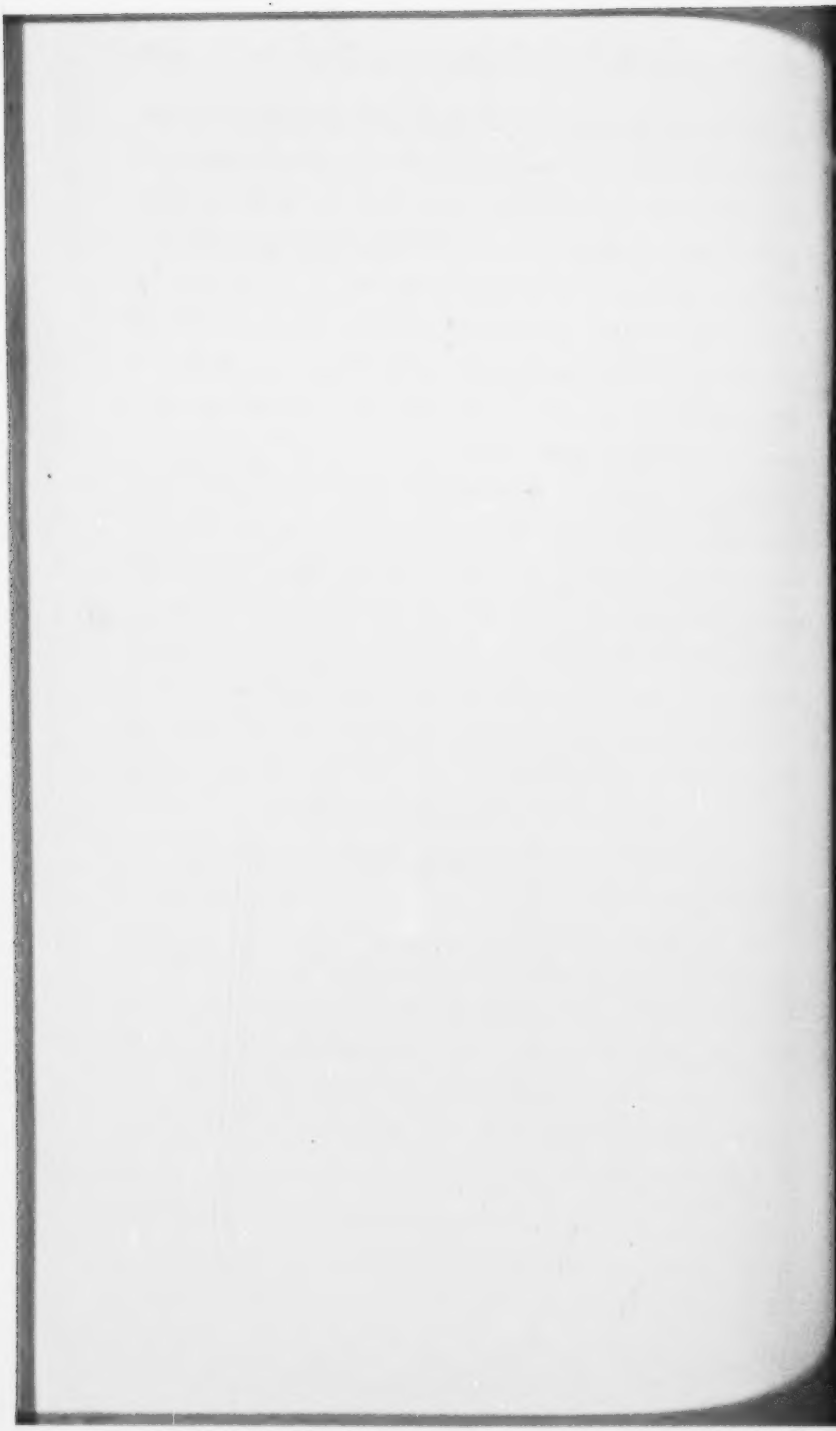
The even-numbered sections between the 20 and 30 mile or indemnity limits are not affected by this order.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: U. S. vs. S. P. Co. No. 587. Defendants' Exhibit No. 30. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. U. S. vs. S. P. Co. No. 600. Defendants' Exhibit No. 312. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.



TS EXHIBIT No 31
ongley,
cial Examiner.

LED
19 1895.
AN DYKE Clerk

FOLD OUT IS TOO LARGE TO BE FILMED

1628

Defendants' Exhibit No. 32.

A. M.
E. H. H.
M. C. McN.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal of Department of the Interior.]

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

Department of the Interior.

Washington, D. C.,

17th February, 1874.

Messrs. Foulke, Sullivan & Brown. 43-685. Southern Pacific. Exmn. of 50 miles.

Gentlemen: Application having been made by the president of the Southern Pacific Railroad Company for the examination by commissioners of an additional section of 50 miles, of the completed line of said company's road, commencing at or near Fernando, the initial point in the S. W. ¼ sec. 3, T. 2 N., R. 15 W. San Bernardino base and meridian, and ending at a point in S. W. ¼ sec. 26, T. 1 S., R. 9

W., you will, under your appointment by the President of the United States as commissioners, examine and report upon the same.

A map and profile of the road examined will be transmitted with your report. I enclose herewith forms of certificates to be made on such map and profile by the president and chief engineer of the company.

You will be guided in the discharge of your duties by the "Circular of Instructions for the Examination of Railroads," dated 28th April, 1871, copy herewith.

The 21st section of the act of 27th July, 1866 (14 Stat. 299), fixes your compensation at $10 per day for each day actually and necessarily employed, and 10 cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and must be paid by the company. Duplicates of the receipts given by you, on payment thereof, will be inclosed with the report.

Be pleased to state clearly in your report whether or not this portion of road is in all respects "first-class," and whether you recommend its acceptance. Also inform the department if any improvement has been made in the ballast of former sections examined.

Very respectfully,
Your ob't servant,
C. DELANO,
Secretary.

L. M. Foulke, Esq., San Francisco, Cal.,
Eugene L. Sullivan, Esq., San Francisco, Cal.,
Calvin Brown, Esq., Mare Island, Cal.,
Comm's. on Southern Pac. R. R.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 313" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, and "Defendants' Exhibit No. 32" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 587, before Leo Longley, special examiner, and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit No 32. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 313. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 33.

A. M.
M. C. McN.
E. H. H.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal of Department of the Interior.]

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

Department of the Interior.

Washington, D. C.,
1st October, 1875.

Messrs. Foulke, Brown & Sullivan, 49-221. Southern Pac. 50 addnl. mls. completed.

Gentlemen: It having been reported by the vice-president of the Southern Pacific Railroad Company that 50 additional miles of that road are completed and ready for examination by commissioners, you will be pleased to examine it as soon as practicable, reporting result to this department as usual, under instructions formerly given. This portion of road commences "at a point in N. E. ¼, section 24, T. 1 S., R. 9 W., San Bernardino

base and meridian, and running thence in a southeasterly direction, terminates at a point in the N. E. ¼, section 27, T. 1 S., R. 9 W., San Bernardino base and meridian, and running thence in a southeasterly direction, terminates at a point in the S. W. ¼ of section 4, T. 3 S., R. 1 W., same base and meridian."

Very respectfully,

R. B. COWEN,

Acting Secretary.

Messrs. Foulke, Brown & Sullivan,
Comrs. Southern Pac. R. R.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 314, Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. No. 587. Defendants' Exhibit No. 33. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 314" in the case entitled The United States of America, Complainants, vs. The

Southern Pacific Railroad Company et al., Defendants, No. 600, and "Defendants' Exhibit No. 33" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 8th day of May, A. D. 1896.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 34.

A. M.
E. H. H.
M. C. McN.

UNITED STATES OF AMERICA.
Department of the Interior.
Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

[Seal of Department of the Interior.] JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

Department of the Interior.

Washington, D. C., 17th June, 1876.

Telegram, 52-139. Foulke, Brown & Sullivan, Commr's. So. Pac. R. R. Co.

L. M. Foulke, Calvin Brown and Eugene L. Sullivan, Commissioners, San Francisco, California:

Proceed to examination of fifty additional miles of branch line of Southern Pacific Railroad.

Z. CHANDLER,
Secretary.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 315" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, and "Defendants' Exhibit No. 34" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal]

WM. M. VAN DYKE,
Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit No. 34. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 315. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 35.

A. M.

E. H. H.

M. C. McN.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department in the interior to be affixed, the day and year first above written.

[Seal of Department of the Interior.]

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

Department of the Interior.

Washington, D. C., 6th February, 1877.

Messrs. Foulke, Brown & Sullivan, 55 155. Southern Pacific R. R. R. Completion of 50 miles of branch line.

Gentlemen: The president of the Southern Pacific Railroad Company of California has notified this department of the completion of another section of the railroad which they were authorized to build by the 23d section of the act approved 3d March, 1871 (16 Stat. 579). Said section begins at or near San Fernando, at a point in the N. W. ¼ of sec. 3, T. 2, N., R. 15 W., San Bernardino base and meridian, runs in a northerly direction, and ends at a point in the N. E. ¼ of sec. 17, T. 11 N., R. 12 W., same base and meridian, a distance of 50 miles.

You will proceed to examine said section, under instructions heretofore given you.

Very respectfully,

Z. CHANDLER,
Secretary.

Messrs. L. M. Foulke, Calvin Brown and E. L. Sullivan,
Comrs., San Francisco, Cal.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the fore-

going papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 316" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, and "Defendants' Exhibit No. 35" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibt No. 35. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 316. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 36.

A. M.
E. H. H.
M. C. M. N.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

[Seal of Department of the Interior.]

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

Department of Oct. 27, 1877. the Interior.

Executive Mansion,
Washington, D. C., Oct. 27, 1877.

By virtue of the authority vested in the President of the United States by the 4th section of the act, approved 27 July, 1866 (14 Stat. 292), Eugene L. Sullivan and A. S. Bender, of California, and Z. B. Sturgus, of Indiana, are hereby appointed commissioners to examine and report to the President of the United States upon the road and telegraph line authorized by the 18th section of said act, Joint Resolution of 28th June, 1870 (16

State. 382), and the 23d section of the act, approved 3d March, 1871 (16 Stat. 579), to be constructed by the Southern Pacific Railroad Company of California.

R. B. HAYES.

[Endorsement]: Southern Pacific R. R. Department of the Interior. Lands and railroads. Received 27 Oct., 1877. Dated 27 Oct. 1877. From the President. Subject: Appoints E. L. Sullivan, A. S. Bender, and Z. B. Sturgus, Comrs. to examine So. Pacific R. R. Action: 187—. Respectfully referred to the commissioner of the general landoffice. Commissioners notified 27 Oct., 1877. Registered 2-7, '93. Chief Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California. do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as "Defendants' Exhibit No. 317, in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants. No. 600, and "Defendants' Exhibit No. 36," in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit No. 36. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 317. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 37.

A. M.
M. C. M. N.
E. H. H.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

[Seal of Department of the Interior.] JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

Department of the Interior.

Washington, D. C., 27th October, 1877.

59-115.
Southern Pac. R. R.
Comrs. Instructed.

Messrs. Sullivan, Bender & Sturgus.

Gentlemen: Application having been made by the president of the Southern Pacific R. R. Co. for the examination by commissioners of one hundred and eighteen and 37-100 miles of the completed line of said company's road, commencing at a point in the S. W. ¼ of sec. 24, T. 5 S., R. 7 E., San Bernardino base and meridian, and ending at a point in the S. E. ¼ of sec. 26, T. 16 S., R. 22 E., same base and meridian, you have been appointed by the President of the United States commissioners to examine and report upon the same.

The appointment is made upon condition that you have neither directly nor indirectly any interest in this corporation, nor any connection with or bias for or against it which would interfere with impartial performance of the duties imposed upon you. Be pleased to at once advise this department whether you accept or decline the position. If you accept, the enclosed blank oath must be duly executed and returned. Three commissioners are required to make the examination and sign the report; therefore, if either should decline, the others will not be authorized to act until they are advised of the appointment of another person to fill the vacancy.

A map and profile of the road examined will be transmitted with your report. I enclose herewith forms of certificates to be made on such map and profile by the president and chief engineer of the company.

You will be guided in the discharge of your duties by the "Circular of Instructions for the Examination of Railroads," dated 28th April, 1871, copy herewith.

The 21st section of the act of 27th July, 1866 (14 Statutes, 299), fixes your compensation at $10 per day for each day actually and necessarily employed, and 10 cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and must be paid by the company. Duplicates of the receipts given by you on payment thereof will be inclosed with the report.

On the reception by the department of your letters of acceptance and oaths of office, you will be ordered to proceed with the examination.

A copy of the President's order appointing you commissioners is herewith enclosed.

Very respectfully,

C. SCHURZ,
Secretary.

Messrs. E. L. Sullivan,
A. S. Bender,
San Francisco, Cal.
Z. B. Sturgus, Washington.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19th, 1895, said original exhibit being described as "Defendants' Exhibit No. 318" in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, and "Defendants' Exhibit No. 37," in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 587, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 8th day of May, A. D. 1896.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit No. 37. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. 318. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 43.

ANNUAL REPORT

of the

COMMISSIONER OF THE GENERAL LANDOFFICE

for the

Fiscal Year Ending June 30, 1875.

WASHINGTON:
Government Printing Office.
1875.

SYNOPSIS of the annual report of the commissioner of the general landoffice for the fiscal year ending June 30, 1875.

No. 9.-Statement exhibiting land concessions by acts of Congress to States and corporations, &c.-Continued.

States.	Date of laws.	Statutes.	Page.	Name of road.	Mile Limits.	Estimated quantity embraced in the limits of the grant.	Estimated quantity which the company will receive from the grant.	Number of acres certified or patented for the year ending June 30, 1875.	Number of acres certified or patented up to June 30, 1875.
Corporations									
Do.....	July 27, 1866	14	292	Southern Pacific	20 and 30	6,000,000.00	3,750,000.00	394,447.09	400,413.42
Do.....	Mar. 3, 1871	16	579	Southern Pacific from a point at or near Tehachapi Pass to the Texas Pacific Railroad at or near Colorado River	20 and 30	3,520,000.00	3,000,000.00	-----------	-----------
Do.....	Mar. 3, 1871	16	573	Texas Pacific	(California, 20 and 30; Territories, 40. 50.	18,000,000.00	17,000,000.00	-----------	-----------

I hereby certify that the foregoing three pages are a full, true, and correct copy of the original evidence introduced by the defendants in the case of United States vs. Southern Pacific Railroad Company et al., numbered 587, on the docket of the United States Circuit Court, 9th Circuit, Southern District of California, as "Defendants' Exhibit No. 43."

LEO LONGLEY,
Special Examiner.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. No. 587. Defendants' Exhibit No. 43. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GERRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY, Defendants.	No. 587.

Second Partial Report of Special Examiner in Chancery.

To the Honorable, the Judges of the Circuit Court of the United States, in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause as of the 23d day of January, 1895, whereby it is ordered that the undersigned, as special examiner in chancery, shall take the evidence in the above-entitled cause and report the same to the Court, the said special examiner does now submit this his second partial report as follows:

That on the 18th day of December, 1895, at ten o'clock A. M., the complainant appeared at the office of the clerk of the United States Circuit Court, in the city of Los Angeles, California, by its solicitor, Joseph H. Call, Esquire, and the defendants by their counsel, Walter J. Trask, Esquire; and thereupon the complainant introduced in evidence exhibits numbered Plaintiff's Exhibits 14 to 27, inclusive, and the defendants introduced in evidence exhibits numbered A1 and A2. And thereupon the further taking of testimony was adjourned subject to further notice.

And the said record accompanying this report contains all of the evidence and exhibits introduced in said cause by the respective parties between the date of my first partial report and the date hereof; all of which, with the exhibits introduced, is herewith returned to the Court.

December 28, 1895.

LEO LONGLEY,
Special Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD CO. et al., Defendants.

No. 587.

Testimony.

Testimony on behalf of plaintiff taken by consent before Leo Longley, special examiner and stenographer, in pursuance of notice this 18th day of December, 1895, at 10 o'clock A. M.

Present:

Joseph H. Call, Esq., Special Assistant United States Attorney, for the Plaintiff.

Walter J. Trask, Esq., of Counsel for Defendants.

Mr. CALL.—I offer in evidence a letter dated May 22, 1883, from the secretary of the interior to the commissioner of the general landoffice, in the case of the Texas Pacific Railroad vs. Daneri, now marked "Plaintiffs' Exhibit No. 14."

Mr. TRASK.—To which the defendants object, upon the ground that it is incompetent, irrelevant, and immaterial, and not in rebuttal.

Mr. CALL.—I offer in evidence the argument of Williams, attorney for the Texas Pacific Railroad Company, in the above-entitled action before the secretary of the interior, now marked "Plaintiffs' Exhibit No. 15."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the decision of the secretary of the interior in the same case, now marked "Plaintiffs' Exhibit No. 16."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the decision of the secretary of the interior in the proceeding of Sohn vs. Texas Pacific Railroad, dated September 25, 1884, now marked "Plaintiffs' Exhibit No. 17."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the decision of the secretary of the interior in the case of Texas and Pacific Railroad Company vs. Gray, dated December 12, 1884, now marked "Plaintiffs' Exhibit No. 18."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of the commissioner of the landoffice to the register and receiver at Los Angeles, dated September 27, 1871, transmitting a map of the Texas Pacific Railroad and ordering a withdrawal, now marked "Plaintiffs' Exhibit No. 19."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of the commissioner of the landoffice to the register and receiver at Prescott, Arizona, dated November 16, 1871, transmitting a map of the Texas Pacific Railroad and ordering a withdrawal, now marked "Plaintiffs' Exhibit No. 20."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence a stipulation between the attorneys and parties of the above-entitled suit of United States vs. Southern Pacific Railroad to the effect that John C. Brown was the vice-president and a director of the Texas & Pacific Railway Company during all of the year 1881, now marked "Plaintiffs' Exhibit No. 21."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the bill of complaint of the Texas & Pacific Railway Company against the Southern Pacific Railroad Company and others, in the territory of New Mexico, Third Judicial District, now marked "Plaintiffs' Exhibit No. 22."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of the register and receiver at Los Angeles to the commissioner of the landoffice, dated April 1, 1873, acknowledging receipt of withdrawal order of September 27, 1871, now marked "Plaintiffs' Exhibit No. 23."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence certified copy of the annual report to the secretary of the interior, of the Texas & Pacific Railway Company, for the year ending June 30, 1873, together with the annexed letter of Scott, president of said company, transmitting said letter, now marked "Plaintiffs' Exhibit No. 24."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the annual report of the Texas & Pacific Railway Company to the secretary of the interior for the year ending June 30, 1876, together with Scott's letter of transmittal, now marked "Plaintiffs' Exhibit No. 25."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the annual report of the Texas & Pacific Railway Company to the secretary of the interior for the year ending June 30, 1877, together with Scott's letter of transmittal, now marked "Plaintiffs' Exhibit No. 26."

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the map of the Texas & Pacific Railway Company through Texas, New Mexico, Arizona, and California, filed in the department of the interior with the annual report of said company for the year ending June 30, 1877, now marked "Plaintiffs' Exhibit No. 27."

Mr. TRASK.—Same objection.

Testimony taken on behalf of defendants, by consent, before Leo Longley, special examiner and stenographer, in pursuance of notice, this 18th day of December, 1895, at 10 o'clock A. M.

Present:

Joseph H. Call, Esq., Special Assistant United States Attorney, for the Plaintiff.

Walter J. Trask, Esq., of Counsel for the Defendants.

Mr. TRASK.—I offer in evidence a certified copy of letter from Henry Beard, addressed to Honorable J. Q. C. Lamar, secretary of the interior, inclosing a copy of the company's resolution of May 16, 1871, accepting the branch line grant, and stating the reasons for filing the same at that time, and ask that it be marked "Defendants' Exhibit A1."

Mr. CALL.—I call your attention to the fact that the time for taking defendants' testimony in this case has expired, and I consent that additional testimony can be taken at this time, with the understanding that no objection shall be made to the plaintiffs' evidence taken at this time on the ground that it is not in rebuttal. And I also object to the offer of said exhibit on the ground that the same is incompetent, immaterial, and irrelevant.

Mr. TRASK.—I offer in evidence a certified copy of the resolution of the company, passed May 16, 1871, accepting the branch line act, which was filed with Mr. Beard's letter above mentioned, and ask that the same be marked "Defendants' Exhibit A2."

Mr. CALL.—Same objections above mentioned, and the further objection that said pretended acceptance was not filed in the office of the commissioner of the general land-office or of the secretary of the interior within the time required by the acts of Congress referred to.

Mr. TRASK.—The defendants ask that the documents introduced by them at this time, marked A1 and A2, be copied by the examiner, and the copies thereof substituted for the original exhibits, and that the defendants may thereupon withdraw said originals.

Mr. CALL.—I object at this time to the exhibits being withdrawn upon substituting the copies.

The further taking of testimony herein is adjourned, subject to further notice.

[Endorsed]: Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 14.

M. N. (4-207.) R. F. F.

Department of the Interior.

General Landoffice,

Washington, D. C., September 20, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original as it appears on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

Exd. E. B. De g. J. K. McC. S. W. R.

Department of the Interior.

Washington, May 22, 1883.

The Commissioner of the General Landoffice:

Sir: I have considered the case of Emanuelle Daneri vs. The Texas and Pacific Railway Company, involving the N. ½ of S. W. ¼, S. W. ¼ of N. E. ¼, and the N. W. ¼ of S. E. ¼ of sec. 19, Tp. 18 S., R. 1 W., S. B. M., Los Angeles District, California, on appeal by Daneri from your predecessor's decision of February 5, 1881, rejecting his application to file a pre-emption declaratory statement for said tract.

The record shows that the tract in question is within the limits of the withdrawal under the act of March 3, 1871 (16 Stat., 573), granting lands to said company, which was made October 15, 1871, upon a preliminary line not as yet definitely located. The said tract was also within the limits of the supposed Rancho Millijo or La Punta, which was finally rejected by the United States District Court of California, September 20, 1855, no appeal having been taken to the United States Supreme Court.

By decision of Acting Secretary Cowen, rendered under date of October 28, 1873, the application of Guadaloupe E. de Arguello to purchase the land formerly supposed to have been embraced within the limits of said rancho, under the provisions of the 7th section of the act of July 23, 1866 (14 Stat., 218), was rejected. Pending this action the lands embraced in Mrs. Arguello's claim were suspended from sale by your office October 29, 1872.

The records of your office show that the township plat embracing the tract in question was filed in the local office October 28, 1879.

On December 26, 1879, Daneri made application at said office to file a declaratory statement for such tract, alleging settlement thereon January 29, 1879, but the register and receiver refused the same on the ground that said tract was embraced in the withdrawal for the railroad. From this action Daneri appealed, basing his appeal upon the ground that the tract in question was suspended from said withdrawal by reason of the pendency of the Millijo grant claim, and that upon its rejection said tract reverted to the United States.

I am of the opinion, however, that the rancho claim having been finally rejected in the year 1855, as aforesaid, the tract in question was not excepted from the operation of the railroad grant, and that the temporary suspension pending the consideration of Mrs. Arguello's application to purchase the tract, embracing the one in question, did not affect the railroad withdrawal, since which date the lands thus withdrawn have been in a state of reservation, and not, therefore, subject to disposal under the pre-emption or other laws.

This may be a case of hardship for the settler; but unfortunately the executive has no option in the matter. The Supreme Court, in Schulenberg v. Harriman (21 Wall. 44), having laid down the rule that there could be no effective declaration of forfeiture, even upon condition broken, the grant to the company must be held intact until the legislature or judicial branch declares the grant to be inoperative, because of failure to construct within the time prescribed.

The attention of Congress has been called by some of my predecessors, as well as by myself, to the fact that large tracts of public lands are reserved for the benefit of certain railroad companies under the provisions of acts of Congress, and that many of these companies (including the Texas and Pacific) have not complied with the law which provides for the completion of their roads within a specified time.

No action having been taken by Congress, I can but accept its failure to act as an expression of the legislative will that the decisions of the courts and the opinions

of attorneys general bearing upon the points involved shall be my guide in administering the law. This being the case, I do not find any sufficient reason for refusing to affirm your decision; and it is accordingly affirmed.

The papers submitted by your letter of November 9, 1891, are herewith returned.

Very respectfully,

H. M. TELLER,
Secretary.

Vol. 3-228-'81.

[Endorsed]: (587.) Ex. 14 L. L. In the Circuit Court of the United States, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 14. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 15.

M. N. (4-207.) R. F. F.

Department of the Interior.

General Landoffice,

Washington, D. C., September 20, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of the argument filed on behalf of the company in the case of E. Daneri vs. Texas Pacific R. R. Company is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my

name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,
Commissioner of the General Landoffice.

Exd. E. B. De J.

AMANUELLE DANERI
vs.
TEXAS PACIFIC RAILROAD CO.

On Appeal Before the Hon. Sec. of the Interior.

In the matter of the above-entitled case, involving the N. ½, S. W. ¼, S. W. ¼, N. E. ¼, and N. W. ¼, S. E. ¼, sec. 19, Tp. 18 S., R. 1 W., S. B. M., now on appeal before the Hon. Sec. of the Interior from the decision therein Feb. 5th, 1881, of the Hon. Com. Genl. Landoffice, the said Railroad Co., by its attorney, now presents for argument on appeal in said case the following points, to wit: That Hon. Com. in his decision of Dec. 18, 1880, in said case was clearly in error in holding that the application of Mrs. Guadalupe E. Arguello to purchase certain lands (embracing the tract in controversy), under the act of July 23, 1866, was in the nature of an undetermined Mexican grant claim, and thereby excepted said tract from the operation of the grant to said Co.; that under the universal practice in the general landoffice and the local offices applications to purchase under said act have been treated merely as an adverse pre-emption filing; that during the pendency of said applications under said act in

the local office at Los Angeles, Cal., pre-emption filings for lands embraced in such applications were admitted, and in no case has a township plat been suspended or lands been reserved from the operation of the pre-emption and homestead laws of the United States by reason of such application.

That under all precedent and rules of the general land-office the Hon. Com. is justifiable in reviewing and reversing a previous erroneous ruling, and in this case it is apparent that his decision of Dec. 18, 1880, was in error, and that the decision of Feb. 5, 1881, should be affirmed.

ALFRED JAMES,
Attorney for T. P. R. R. Co.

[Endorsed]: Argument. On appeal before Hon. Sec. of the Interior. Emanuelle Daneri vs. T. P. R. R. Co. Filed August 11, 1881. Chas. R. Johnson, Register. 1881, 58,010, enc. 1. Alfred James, Atty. for R. R. Co. (587.) Ex. 15. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 15. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 16.

M. N. (4-207.) R. F. F.

Department of the Interior.

General Landoffice,

Washington, D. C., September 20, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of a letter

is a true and literal exemplification of the original of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,
Commissioner of the General Landoffice.

Exd. W. J. D.
E. B. De g. Case 3093. J. D. S.
H. D. L.
Refer in reply to
this initial:
"F."

Department of the Interior.

General Landoffice,
Washington, D. C., Feb. 5, 1881.

Address only the
Commissioner of the General Landoffice.

Register and Receiver, Los Angeles, California.

Gentlemen: Referring to my decision of December 18, 1880, in the case of Emanuelle Daneri vs. The Texas and Pacific Railroad Company, involving the N. W. ¼, S. W. ¼, S. W. ¼, N. E. ¼, and N. W. ¼, S. E. ¼, of section 19, 18 S., 1 N., S. B. M., I have to advise you that the same was erroneous, in that it held the said tract to be subject to preemption.

The land is within the limits of the grant of March 3, 1871, to the said company. The line of road is not yet

definitely located. Lands withdrawn upon a preliminary line October 15, 1871.

The tract was also within the limits of the Millijo rancho, or La Punte, which was finally rejected by the United States District Court of California September 20, 1855, no appeal to the Supreme Court of the United States having been taken.

By decision of this office February 6, 1872, the claim of Mrs. Guadaloupe E. Arguello to the lands in said rancho under act of July 23, 1866, embracing 2274.30 acres, was rejected, and the same was affirmed by the secretary of the interior October 28, 1873.

The lands embraced in Mrs. Arguello's claim were not suspended until October 29, 1872, and then only to await the action of the secretary of the interior on Mrs. Arguello's appeal. At the date of the withdrawal for the railroad company the land in question was public land, the rancho claim having been finally rejected in 1855. The temporary suspension made in 1872 did not affect the withdrawal of October 15, 1871, and the lands are now in a state of reservation for the railroad company, and are not subject to pre-emption or other entry.

My said decision of December 18, 1880, is accordingly set aside and Mr. Daneri's application rejected, subject to appeal within 60 days. Advise the parties in interest of this action.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: (587.) 16 L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 16. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 17.

M. N. (4-207.) R. F. F.

Department of the Interior.

General Landoffice,

Washington, D. C., September 20, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed letter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

Exd. J. K. McC.

E. B. De g. D. A. McK.

Department of the Interior.

Washington, September 25, 1884.

The Commissioner of the General Landoffice.

Sir: I have considered the case of Harrison S. Sohn vs. The Texas & Pacific Railroad Company, involving the

S. E. ¼ of section 27, township 18 S., range 2 W., Los Angeles, California, on appeal by the company from your decision of November 20, 1883, awarding the land to Sohn.

It appears that the land is within the 20-mile limits of the grant of March 3, 1871, to said company, and was withdrawn for their benefit October 15, 1871. The line of the road has not yet been definitely located. Sohn filed homestead application for the land April 19, 1882, which was rejected by the local office on the ground that the tract was within the withdrawal for said company. On appeal by Sohn alleging that a valid pre-emption claim to the tract existed at date of said withdrawal, your office ordered a hearing, and on review of the evidence offered found that such a claim did then exist (made by one Howard Putnam, who filed declaratory statement No. 158 on April 16, 1870, and who resided on and improved the tract until 1872), and that it excepted the land from the withdrawal.

The company object that said evidence does not sufficiently identify the land. On examination of the evidence, I find that the land in controversy is sufficiently identified as the identical land which Howard Putnam claimed and occupied at date of the withdrawal.

They object further that the evidence does not sufficiently establish the qualifications of Putnam as a pre-emptor.

I find that the evidence shows, by his own and the testimony of two others, that he had all the prescribed qualifications of a pre-emptor.

They object further that the right of Sohn to an entry on this land has been heretofore rejected and the land

declared to be withdrawn for the railroad. I find that in 1879 Sohn applied for the land under the pre-emption law, alleging that it was excepted from the grant by reason of its being within the Milijo rancho, which was subjudice at that date; and that this claim was rejected, and the rejection became final. As this was an adjudication upon an issue different from that in the case before me, it does not affect the latter case.

The company object finally that Sohn has not shown his own qualifications or taken the homestead oath. As the land in controversy was excepted from the withdrawal, and has not been appropriated by a definite location of the company's line, this question is exclusively between Sohn and the Government.

Your decision is affirmed.

Herewith are returned the papers accompanying your letter of May 6, 1884.

Very respectfully,

H. M. TELLER,
Secretary.

Vol. 4-661.

[Endorsed]: (587.) Ex. 17. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 17. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 18.

M. N. (4-207.) R. F. F.

Department of the Interior.

General Landoffice,

Washington, D. C., September 20, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

Exd.

E. B. De J. H. D. L. J. K. McC. J. L. McC.

Department of the Interior.

Washington, December 12, 1884.

The Commissioner of the General Landoffice.

Sir: I have considered the case of the Texas and Pacific Railway Company vs. Sarah Ann Gray, involving the right of the latter to make pre-emption filing for the W. ½ of the N. W. ¼ of sec. 35, Tp. 15 S., R. 5 E., S. B. M., Los Angeles District, California, on appeal by the company from your adverse decision of May 2, 1884.

The land is within the primary limits of the grant of March 3, 1871, to said road. The lands in the odd-numbered sections were withdrawn upon a preliminary line October 15, 1871.

April 9, 1883, Sarah Ann Gray applied at the district office to make pre-emption filing for the land in question, alleging settlement February 28, 1883. Her application was rejected by the local officers on the ground that the land was within the limits of the withdrawal for the benefit of said railway company.

Gray appealed to your office, and filed therein affidavits setting forth that said land was, at the date of such withdrawal, claimed, occupied, and improved by a qualified pre-emption settler. Thereupon your office ordered a hearing to ascertain the status of the land at the date indicated. Upon the hearing the register and receiver held that the proof was insufficient to establish such a claim as would except the land from the railroad grant.

From this decision Gray appealed to your office, which reversed the decision of the local officers, whereupon the company appeals to the department.

The testimony shows that one John Sinclair, a citizen of the United States, and in other respects a qualified pre-emptor, a voter in that precinct, settled upon the land in question in 1870; that he had a house and barn thereon, and a garden of some four acres; also some fencing. The witnesses estimate the value of his improvements at from $500 to $700. Sinclair remained upon the land until 1873.

The township plat of survey was filed in the district landoffice October 28, 1879.

I concur with you in the opinion that Sinclair, at the date of the withdrawal for the company, had a valid claim to the land, such as he could have perfected, and which brought it within the list of lands excluded from the grant by act of March 3, 1871 (16 Stat., 573), by reason of having been "sold, reserved, occupied, or pre-empted." Counsel for the company argue that "it is error to award the land to Gray, because she has not * * * proven her personal qualifications to pre-empt public land. * * * The law grants the pre-emption right only to the head of a family, a widow, or a single person over twenty-one years of age. It is not shown that Gray is one or more of these."

If the proof at the hearing ordered had shown that the tract in question had passed to the company by the grant, the United States would not thereafter have felt called upon to dictate to whom and upon what terms the company should dispose of its land. On the other hand, since the tract did not pass to the company, it is not now competent for the company (being no longer an interested party) to constitute itself the protector and guardian of the Government.

I therefore affirm your decision permitting Gray to make pre-emption filing for said land.

The papers transmitted with your letter of August 29, 1884, are herewith returned.

Very respectfully,

M. L. JOSLYN,
Acting Secretary.

Vol. 4, 368.

[Endorsed]: (587.) Ex. 18. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 18. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 19.

M. N. (4-207.) W. J. M.

Department of the Interior.

General Landoffice,

Washington, D. C., April 20, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed copy of office letter dated September 27, 1871, to the register and receiver at Los Angeles, California, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

Department of the Interior.

General Landoffice,

September 27th, 1871.

Register and Receiver, Los Angeles, California.

Gentlemen: By direction of the secretary of interior, dated 2d inst., and in accordance with the 12th

section of the act of 3d March, 1871, granting lands to aid in the construction of the Texas Pacific Railroad, I transmit herewith a map showing the designated line of route of said railroad in the State of California and the limits to the extent of twenty miles of the land grant on each side of said road, and you are hereby directed to withdraw from pre-emption or homestead entry, private entry or sale, all the odd-numbered sections of land surveyed or unsurveyed within those limits. The even-numbered sections are, by the terms of the act, open to pre-emption and homestead entry when surveyed, and you will so treat them holding them in accordance with the requirements of the act of March 3d, 1853, at the double minimum price of $2.50 per acre.

Pre-emption or homestead settlers on any of the surveyed lands prior to this withdrawal, and who shall meet the requirements of law, will be entitled to hold their lands at the minimum price of $1.25 per acre.

This order will take effect from the date of its receipt by you, and you are directed to acknowledge the exact time of its reception.

Very respectfully,

W. W. CURTIS,
Acting Commissioner.

[Endorsed]: (587.) Ex. 19. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 19. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 20.

M. N. (4-207.) W. J. M.

Department of the Interior.

General Landoffice,

Washington, D. C., April 20, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of office letter, dated November 16, 1871, to the register and receiver at Prescott, Arizona, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

Department of the Interior.

General Landoffice,

November 16, 1871.

Register and Receiver, Prescott, Arizona.

Gentlemen: The Texas Pacific Railroad Company, having filed a map of the proposed line of their road from El Paso to San Diego, Cal., as required by the 12th section of the granting act March 3d, 1871, I herewith transmit a map showing, as near as may be, the line of said road through the territory of Arizona, together with the

limit of 40 miles on each side of the route, and in accordance with the requirements of the act you are hereby directed to withdraw from pre-emption or homestead entry or sale all the odd-numbered sections of land falling within said limits. The even-numbered sections you will hold at the double minimum price of $2.50 per acre, and dispose of at that ratability and under the pre-emption and homestead laws only.

As this is the first grant of lands and order of withdrawal pertaining to railroads in Arizona, I call your attention:

1st. To the provisions of the homestead act, which limits entries on double minimum lands to 80 acres, except to soldiers of late war, who are allowed to take 160 acres, as indicated on page 6 of accompanying circular and form of affidavit, on page 26.

2d. In payment by pre-emptors, the party may pay with military land warrants or agricultural college scrip and cash. In payment with warrants or scrip the warrant must be of the same denomination in acres as the tract, and is receivable acre for acre, rating the warrant or scrip at $1.25 per acre, and the additional payment must be made with cash at the rate of $1.25 per acre. The certificate of location must issue for the whole tract and on the warrant or scrip location, the receiver issuing an excess receipt for the cash and accounting for the money in his cash returns, but not bringing the acres into his cash footings, they appearing properly in his warrant abstract. The register will issue no certificate of sale on such excess payments.

3d. Where a party may establish his claim to either the odd or even sections within the limits of the grant, in accordance with the requirements of the pre-emption laws showing settlement prior to this withdrawal, he will be entitled to the land at $1.25 per acre.

The withdrawal will take effect upon date of the receipt of this letter at your office, and you will immediately, upon its receipt, acknowledge same by letter to this office.

The map herewith indicates only the preliminary line of road and withdrawal, and the same will be adjusted permanently as the surveys shall progress and the company file their map of definite location. Until you receive further instructions from this office, however, you will be governed by the lines laid down on the map herewith.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: (587.) Ex. 20. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 20. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk. 3677. Department of the Interior. L. & R. R. Div. Received Apr. 23, 1895.

Plaintiffs' Exhibit No. 21.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA, Plaintiffs,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.
No. 587.

Stipulation.

The defendants herein admit that John C. Brown was the vice-president and a director of the Texas and Pacific Railroad Company during all the year 1881, and agree that such fact shall be considered as fully proved, for all purposes of the above-entitled suit, by these presents.

Dated and signed November 5, 1895.

JOSEPH D. REDDING,
Solicitor for Defendants.
WM. SINGER, JR.,
Attorney for Defendants.

WM. F. HERRIN,
Counsel for Defendants.

[Endorsed]: (Ex. 21.) L. L. No. 587. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific

Railroad Company et al. Stipulation. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 21. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 22.

United States of America,
Territory of New Mexico,
Third Judicial District. } In Chancery.

Between The Texas & Pacific Railway Company, Complainant, and The Southern Pacific Railroad Company of New Mexico, and the Southern Pacific Railroad Company of Arizona, and The Southern Pacific Railroad Company of California, and The Los Angeles & San Diego Railroad Company, and The Central Pacific Railroad Company, Defendants.

To the Honorable WARREN BRISTOL, Associate Justice of the Supreme Court of the Territory of New Mexico, and Presiding Judge of the Third Judicial District Court of said Territory:

Your orators, the Texas & Pacific Railway Company, a corporation duly created under and by virtue of an act of Congress of the United States, approved March 3d, 1871, and the subsequent acts amendatory thereto, brings this its bill against the Southern Pacific Railroad Company of New Mexico, and thereupon your orator humbly complaining shows unto your Honors that it is a corporation, having its principal office in the city of New York,

in the State of New York; that the objects and purposes of the act of Congress incorporating said Texas & Pacific Railway Company were to authorize and empower it to build, construct, maintain, and operate a continuous line of railway and telegraph from or at a point near Marshall, Harrison county, in the State of Texas; thence by the most direct and eligible route to be determined by your orators to a point at or near El Paso; thence by the most direct and eligible route to be selected by your orators through New Mexico and Arizona to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence by the most eligible route to San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude, and it was in and by said act of incorporation vested with all powers, privileges, and immunities necessary to carry into effect the purposes of said act.

And your orator further shows to your Honors that it was provided in and by said act of incorporation, as an inducement to the acceptance of the charter so created, and to the construction of the railroad of your orator, that the right of way through the public lands be, and were thereby, granted to your orator for the construction of the said railroad and telegraph line, which right of way so granted is to the extent of two hundred feet in width on each side of said railroad where it may pass over public lands; and there is also by said act of incorporation and charter granted to your orator grounds for workshops, station and depot-houses, wharves, switches, side-

tracks, turntables, water station, and such other structures as may be necessary for your orator's line of railway not exceeding forty acres of land at any one point.

And your orator further shows to your Honors that, as an additional inducement to the acceptance of said charter and the expenditure of vast sums of money necessary in the construction of said line of railway, it was further provided that for the purpose of aiding in the construction of said railroad and telegraph line therein provided for, there was at that time, to wit, on March third, 1871, granted to your orators, its successors and assigns, every alternate section of land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as such line might be adopted by your orators through the territories of the United States and ten alternate sections of land per mile on each side of said railroad in California.

And your orator further shows unto your Honors that, as an additional inducement to the acceptance of said charter and the construction of said line of railway, it was further provided that your orator, within two years after the passage of said act of Congress, should designate the general route of its said road as near as may be, and should file the same in the department of the interior, and, when the map was so filed, the secretary of the interior should cause the lands within forty miles on each side of said designated route within the territories and twenty miles within the State of California to be withdrawn from pre-emption, private entry, and sale.

And your orator further shows to your *orators* that the said act of Congress incorporating your orator further

provided that it should be, and it was declared to be, a military and post road, and that no act of your orator nor any law of any State or territory should impede, delay, or prevent your orator from performing its obligations to the United States in that regard. Extracts of said acts of Congress are hereto attached, marked Exhibit "A."

And your orator further shows to your Honors that the rights and privileges so as aforesaid granted, continued, and guaranteed to your orators constitute a species of property known in law as a franchise, and is of a nature peculiar and extraordinary; that it consists in part of the right or franchise to construct and operate a railway with the ordinary and usual rights *rights* and privileges appurtenant thereto, and further in the right or franchise, by grading, constructing, and equipping said road, to acquire from the United States patents for the lands of said United States to the extent of twenty alternate sections of public lands per mile in the territories and ten sections of land per mile in California, on each side of said railway line, as adopted by your orator for each mile of said railway so graded and constructed, and in the further right or franchise, and especially the exclusive right to own and patent the same within the limits of said reservation of forty miles in the territories and twenty miles in California. That said several rights, to wit, the right to construct and operate a railway, to acquire patents for the land by said construction, to own the said alternate sections within said reservation to the exclusion of all others, are interdependent in their nature, neither being as valu-

able without the other; that the right of said reservation is of the essence of the whole franchise, and is that which gives its chief value to the same.

And your orator further shows that in or about the year 1871, and in full reliance of the grants, guarantees, and assurances by the United States to your orator of the said franchises, and especially of its exclusive right, privileges, and immunities, and in the belief that such exclusive rights to construct, operate, and maintain said line of railway, and to own and use said rights and privileges, and the exclusive right to patent, use, and enjoy said lands so granted, was an inherent part of the franchise so created, did organize under and in pursuance of said charter and the subsequent amendatory acts as the Texas & Pacific Railway Company, and accepted the said franchises, grants, and reservation rights, privileges, and immunities as the consideration for, and the conditions of its organization, and thereafter within the times limited by said act of Congress, and the subsequent acts amendatory thereof, did and performed all the acts and things necessary to the full and complete vesting, securing and preserving of the franchises, rights, and privileges so granted and continued.

And your orator further shows to your Honors that it designated and located the general route of its road, and on the 2d day of September, 1871, it duly filed its map and location of its line from Marshall, in the State of Texas, to San Diego, in the State of California, in the department of the interior at Washington, and that said map was by said secretary of the interior filed in the general landoffice

at Washington on said day. That thereafter the lands on your orator's line in the territory were withdrawn by letter on the 22d of November, 1871, of the secretary of the department of the interior, which was received at the landoffice at Santa Fe, New Mexico, on the 4th day of December, 1871, and that said land, for a distance of forty miles on each side of its line, then, and ever since has been, withdrawn from entry and occupation and sale, and are held for the exclusive and sole use of your orator to be enjoyed, managed, used, and disposed of by your orator in accordance with said act of incorporation and laws supplemental thereto. And your orator further shows to your Honors that for the better understanding of its line and location, and that your Honors may ascertain the extent of its rights and privileges and the land reserved and withdrawn by and in accordance with said act of Congress, the duly certified copies thereof as filed and accepted by the department of the interior as aforesaid, showing said route of your orator, will be exhibited and produced whenever requested by your Honors.

And your orator shows to your Honors that the designated route of the railroad of your orator, as mapped and filed in the department of the interior, is substantially as follows: Beginning at a point on the western boundary line of the territory of New Mexico, about twenty miles north of the 32d parallel of north latitude, near to a place called Stein's Peak; thence running southeastwardly and eastwardly, passing near a place known as Leitendorf's Wells; thence north eastwardly to a point about four

miles south of a place called Soldier's Farewell; thence eastwardly and southeastwardly to the Rio Mimbres, about five miles below Black Rock Tank, on the said river, and thence, crossing said river in a general southeastern direction to the eastern boundary line of the territory of New Mexico, near the southeast corner of said territory, crossing the Rio Grande river, which separates said territory from the State of Texas, at or near, and north of, the town of Franklin, county of El Paso, in the State of Texas, and at or near the town of El Paso, in the Republic of Mexico.

And your orator shows that the forty-mile reservation in favor of your orator as aforesaid, on each side of said line, has been duly and plainly marked on the Government maps of said territory, and especially on the maps in the general landoffice, department of the interior, and are notice to the world of the existence of said reservation and the rights of your orator therein.

And your orator further shows to your Honors that by said surveys, designations, and returns and by said action of the secretary of the department of the interior at Washington, and the land reservation granted to the said Texas & Pacific Railway Company by its said charter, became vested, defined and officially recognized and as is contained in said letter of the secretary of the interior of the date of 22d day of November, 1871, and filed in the landoffice at Santa Fe, in said territory of New Mexico, on the 4th day of December, 1871, a certified copy of which is hereto attached and made part of this bill and marked "Exhibit B." And your orator further shows that on the

filing of said letter the lands therein described became then and ever since then are specially reserved from entry, sale, or pre-emption.

And so your orator submits to your Honors that by said act of incorporation, and the laws supplementary thereto by the actual survey and location of the line of its road across the territory of New Mexico, by the absolute grant to your orator of every alternate section of land to the amount of twenty alternate sections per mile on each side of said railway line as adopted, designated, and located by your orator through said territory of New Mexico, and by the withdrawal of all said lands by the department of the interior from pre-emption, private entry, and sale, for the sole use of your orator, and in the full compliance in all respects by your orator with the terms and conditions of said acts of your orator and the laws amendatory and supplemental thereto, your orator became, in the year 1871, vested with the right to said land and every part thereof so withdrawn from pre-emption and sale, and became and was vested with the sole and exclusive right to locate, construct, furnish, maintain, and enjoy a railroad and telegraph line in, over, and upon said lands, or any part thereof, and upon the line and route so designated, located, and filed in the department of the interior.

And your orator further shows that after its said organization it proceeded to grade and construct its roadbed and railway, commencing near the city of Marshall, in the State of Texas, and that in the year 1873 had completed, and was maintaining and operating in the State of Texas, more than three hundred miles of first-class railway, and

that in or before the year 1876 it had constructed and had in operation over one hundred miles of additional....., so that in or before the year 1877 your orator had constructed and in complete operation and fully equipped upwards of four hundred and forty-three miles of railway in Texas, with a western terminus in the city of Fort Worth, in the interior of said State, and upwards of forty miles of additional under contract. That in the year 1873 the continuation of said work of construction was interrupted by a financial panic which affected the whole country, and by reason of such financial depression your orator was unable for the time to proceed with the construction of its railway and telegraph lines as rapidly as it would have done if said financial difficulties had not existed; your orator shows to your Honors that soon as financial confidence was restored it put under contract more than six hundred miles of its road, two hundred and thirty of which are completed and in actual operation, and almost all of the remaining portion graded and ready for its ties and tracks, with many thousands of laborers at work on the same; and that it has, since it first commenced such construction, completed and in actual operation nearly eight hundred miles of its railway, and that in or before the year 1882 its whole line from its initial point will be completed to the eastern boundary line of the territory of New Mexico; and that it is the intention and purpose of your orator to proceed without delay to construct its line of railway west of said eastern boundary of New Mexico, on the route designated and located by your orator on the maps of surveys filed in the depart-

ment of the interior as heretofore herein shown, and demand the patents for the alternate sections of land reserved by the general Government of the United States.

And your orator further shows to your Honors that by said act of Congress of March 3, 1871, for the purpose of connecting your orator's railway with the city of San Francisco, the Southern Pacific Railroad Company of California was by said act authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to your orator's road at or near the Colorado river, in California, and to no other point or points, or places on or near your orator's line.

And your orator is informed and believes that with full knowledge of said act of Congress of March 3d, 1871, and the rights of your orator thereunder, and with full notice of the location and filing of its map in the interior department and reservation and withdrawal of said lands from entry, pre-emption sale and occupation, the said Southern Pacific Railroad, in fraud of your orator's rights, illegally and in violation of law and the exclusive rights, privileges, and immunities granted to your orator, did, for the purpose of injuring, destroying, and rendering valueless its land grant and robbing it of its franchise, pretend to obtain a charter under the laws of the territory of New Mexico, under the name of the Southern Pacific Railroad Company (of New Mexico), the defendant herein.

And your orator further shows to your Honors that by virtue of said pretended charter (which your orator does not admit to be a legal incorporation), the said defend-

ant pretends it was and is authorized to construct a line of railroad across and through said territory of New Mexico, and the terminus of said pretended road being described in said act of incorporation: The western terminus at a point of connection with the Southern Pacific Railroad (of Arizona) on the western boundary with the thirty-second parallel of north latitude; the eastern terminus to be on the Rio Grande, at a point to be selected by the company, between Mosilla and the southern boundary of said territory.

And your orator further shows to your Honors that said charter and the pretended rights thereunder were obtained after your orator's rights, privileges, and immunities had become vested, and with full knowledge thereof, as heretofore more fully set forth, and after its exclusive right to build, construct, operate, and maintain its line of railway and telegraph over its designated routes as aforesaid had been recognized by the proper department of the United States.

Your orator further represents and charges that it has been informed and believes that the chief object of and the inducement to the Congress of the United States to incorporate your orator was to provide a competing line of railway, transcontinental in its objects and designs, with a view of affording to the commerce of the country cheap transportation, or at least transportation likely to be cheapened by competitive lines from the Atlantic to the Pacific coast. That defendant representing the same interest that it then owned and controlled, and now owns and controls, the Central Pacific of California, operating

and owning as it did the only railway communication with the Pacific Coast, extending from Ogden to San Francisco, confederated and conspired with others to defeat the objects of that congressional legislation by building the Southern Pacific of California and under other names and associations, constructing a line across Arizona, and more recently and now the line in question across the territory of New Mexico, and that these designs and purposes had for their chief, if not their sole, object the defeat of the purposes of the Government to provide for a competing line to their Central Pacific of California. And if their unlawful acts and doings in the construction of said line or lines be not so declared by the Courts, the same parties owning and controlling the Central Pacific of California will operate the other and more southerly railroad to the Pacific coast, to wit, the line in question, and thereby prevent and defeat the establishment and operation by your orator of said competing line.

And your orator shows further that the said defendant has actually constructed its said road across the greater portion of the territory of New Mexico, in and upon and very near to said located line of your orator without its consent, and with full knowledge and in fraud of your orator's rights in the premises, well knowing of the active operations of your orator in the completion of its road through the State of Texas as aforesaid and in the direction of said designated line in New Mexico, and with full knowledge that your orator was moving rapidly with its road westward on its designated route. Yet said defendant has hurried its work forward for the fraudulent and

illegal purpose of occupying your orator's line, and to exclude your orator therefrom, and of preventing your orator from all use and enjoyment of its said lands, privileges and immunities, and is rapidly completing the same, and will, unless restrained by the interposition of this court, continue to occupy the same, and practically prevent your orator from occupying any part thereof, and will in effect forever exclude your orator from any and all use and enjoyment of the land, and every part thereof, so granted as aforesaid to your orator by the United States Government, and so reserved from sale by the department of the interior. And your orator further shows to your Honors that at such points as the line of said defendant's road is not located and constructed or in close proximity to the said line of your orator, as located, designated, and filed in the department of the interior, yet the said defendant to injure and oppress your orator has located and constructed its said railroad the entire distance across the territory of New Mexico, actually within the line of and upon the reservation of your orator in said territory—that is to say, inside of the boundaries of the lands so set apart to your orator and specially withdrawn from sale by the department of the interior, and the constructed line of said defendants has in fact so far encroached upon your orator's reservation as to actually occupy a large portion of the same, without any legal or equitable right so to do, and without the consent of your orator, and to its irreparable injury, which, if persisted in, as it threatens to and will do unless said defendant be restrained by this Court, all of said lands and all of said

reservation, now the property of your orator, will, to all intents and purposes, become lost and valueless to your orator, and your orator will be practically and essentially prevented from ever hereafter extending its said road to the Pacific Ocean, as was originally contemplated by its charter, and its franchise will be rendered comparatively valueless.

The line occupied by defendant is substantially as follows: Beginning at a point on the western boundary of said territory of New Mexico on said 32d parallel of north latitude, about four to six miles south of the above-mentioned beginning point of your orator's designated and located line, and within the limits of said reservation at or near a place called Stein's Pass, thence running in a northeasterly direction and approaching your orator's exact line, and running nearer and nearer thereto until it crosses the same, and thence northeasterly to a point near Ralston, about eight miles north of the said Leitendorf's Wells; thence in a southeasterly direction approaching nearer and nearer to your orator's said line until it again crosses the same and proceeding in said southeasterly direction to a point a few miles south of said Soldier's Farewell, and about eight miles south of your orator's said line, turns again in a northeasterly direction and approaching nearer and nearer, again crosses your orator's said line, and thence proceeding eastwardly and almost touching your orator's line about the new town of Deming, and thence to the Rio Mimbres, and crossing the same about four miles above the place where your orator's line crosses said river, and thence running alongside

your orator's said line, not more than four miles from the same at the farthest point for more than fifty miles, until it strikes the eastern boundary of New Mexico, on the Rio Grande. And so, by an inspection of said map which is referred to, your Honors will perceive that the said railroad of defendants encroaches upon and substantially occupies the whole of your orator's said designated line, practically monopolizes the same, and if not prevented by the Courts will exclude your orator from any practical or valuable use and benefit of the same. Your orator believes that the above delineation of defendant's line is correct. Your orator instituted search in the department of the interior for a map or profile of said line, but did not find one, and now charges that none has been filed.

And your orator further shows to your Honors that it has in writing notified the Southern Pacific Company, defendant, that it is proceeding in violation of the law in building and constructing its line of road over and through your orator's right of way and land grant, and requested it to desist and refrain from interfering with said right of way or reservation; that your orator claimed, by virtue of its exclusive rights and privileges, the railroad fixtures, structures, and appurtenances constructed by defendant, and requested defendant not to interfere with or further use or destroy your orator's franchise, and that said Southern Pacific Railroad Company of New Mexico has not complied with the reasonable request of your orator as in justice and equity ought to have done, but said defendant is still constructing and operating said line in violation of your orator's rights. Copies of all said writ-

ten notices given defendant before the filing of this bill will be filed on or before the hearing, marked "Exhibit C."

And your orator further represents and charges that the construction of the railway line through New Mexico by defendant as aforesaid was and is a trespass upon the rights of your orator; and that your orator, being the owner in the manner herein stated of the land upon which the same is constructed and now being operated, is entitled to the railway, depots, and depot property, and all other fixtures constructed and erected upon said lands by defendant, and your orator now here asserts to the Court its right to said property as well as its use and occupation, and invokes the aid of the Honorable Court to remove the defendant therefrom, and place your orator in complete possession and control of all said property under such orders of the Court as may be consistent with law and the right and equity of the parties, and at the same time perpetually enjoin defendant and all parties claiming by, through, under, or with it from interfering with or using said property.

And your orator is advised and believes and therefore claims that the aforesaid charter, a copy of which is annexed as "Exhibit D," and the rights that said defendant pretends to claim under it in so far as same infringes, violates, disregards, impairs or destroys the rights, privileges, and immunities of your orator in and to the land grant or land reservation of your orator, or the exclusive right of your orator to patent the alternate sections of land in said reservation do impair the obligation of contracts solemnly

made and entered into, by and between the United States and your orator; and that all of the acts and doings of said defendant in pursuance of any pretended rights under said charter are contrary to law, and are in so far null and void as to confer upon it no right whatever to use, maintain, operate, or own, or claim any part or portion of the railway it has constructed over, upon, and along your orator's located and established line, and that the continuation of the acts of the said defendant, as above set forth, are contrary to equity and good conscience, and tend to the great wrong and injury of your orator.

But now so it is, may it please your Honors that the said defendants, combining and confederating with the said Southern Pacific Railroad Company of California, and with the owners of said railroad and divers other persons to your orator at present unknown, whose names, when discovered, your orator prays, if necessary, may be made parties hereto, pretending that said defendant has a lawful right to occupy defendant's said designated line of road and reserved lands, and thus to greatly injure and impair your orator's right and franchises, has constructed its line nearly across the territory of New Mexico, upon your orator's line and within your orator's reservation, and has thus illegally and without competent authority practically monopolized said entire line and said reservation, shutting complainant off from the same, and the said defendant, in further fraud of your orator's rights, is hurriedly progressing in the work of construction and in the face of the rapid approach of your orator toward the said territory of New Mexico, with its line across the conti-

nent, is now building its said road toward the eastern boundary of New Mexico in such haste as to show that is the intention and purpose of the defendant to occupy the whole of your orator's line, and to forever exclude your orator so far as it is in the power of the defendant from any and all use and enjoyment of its said line and its said reservation—all of which acting, doings, and pretenses is contrary to equity and good conscience, and tend to the manifest wrong and injury and oppression of your orator.

The premises considered, your orator prays that said, the Southern Pacific Railroad Company of New Mexico, may be made defendant to this bill, and that all proper and necessary process issue requiring defendant to make answer thereto, and to each and every allegation therein contained as fully as if particularly interrogated thereto, and especially that defendant make full and complete and specific answers to all the following numbered interrogatories as by the note hereunder written the said defendant is required to answer, that is to say:

1st. Whether or not the Southern Pacific Railroad Company of California and the Southern Pacific Railroad Company of Arizona, and the Southern Pacific Railroad Company of New Mexico are not in truth and in fact one and the same corporation, and whether they are not managed, controlled, and operated by the same persons having large interests in both companies; and

2d. Whether or not the same officers, in effect, if not form, manage all of said companies, and their directors and principal stockholders in said road the same in each company, and whether or not said companies are man-

aged and controlled as one and the same, and if it is not the purpose and intention of the persons controlling said corporation that the same shall be operated on completion as one and the same line; and

3d. Whether or not said C. P. Crocker subscribed to one thousand nine hundred and eighty out of two thousand shares of said capital stock for himself or for the benefit of said Southern Pacific Railway Company of California, and whether or not said Southern Pacific Railroad Company of California paid the assessment of ten per cent, or reimbursed him for such assessment; and

4th. Whether or not said Southern Pacific Railroad of California or Arizona and New Mexico, one or all of them, are not leased to and operated by and under the management of the Central Pacific Railway, and whether or not the C. *D.* Crocker, president of the Southern Pacific Railroad of New Mexico, is not the same C. P. Crocker, vice-president of the Southern Pacific Railroad of California.

And your orator further prays that the said Southern Pacific Railroad Company of New Mexico be enjoined from further building, constructing, or in any manner continuing its work upon the unfinished portion of its said railroad at any and all points in said territory of New Mexico, in, upon, and near the designated line of your orator in said territory, as above described, and at all points within the boundary lines of your orator's said land reservation—that is to say, any and all places and points within a space of forty miles on each side of your orator's said designated and located line; and that said defendant be enjoined and restrained from operating,

working, maintaining, or in any manner using its said railroad line already constructed, or any fixtures, structures, or appurtenances thereto in any manner belonging at any, all, and all points in said territory of New Mexico wherever the same has been built, constructed, and finished, and are now being used by defendant in, upon, and near your orator's said designated line of railroad, and at any and all places within the said land reservation of your orator, extending, as aforesaid, forty miles on each side of your orator's said designated railroad line; and to that end that writs of injunction issue from your Honor's court to be served upon the proper officer or officers of defendant (said incorporation), enjoining defendant and all its agents, employees, laborers, and servants from doing and performing any act whatever in and toward the further construction of defendant's said unfinished road, and from doing and performing any act in working, running, or in any manner operating any of said finished road as aforesaid, or using or interfering with any fixtures, structures, building, or improvements erected by defendants in the construction of and for the use of its said railroad in said territory, and within the limits aforesaid, and that at the hearing hereof said injunction be made perpetual, and that in the meantime that a temporary restraining order be issued until the time fixed by your Honors for said defendant to show cause why the injunction prayed for herein should not issue; that a receiver be appointed by the Court to take into possession all of said railway of defendant lying within the limits of your orator's reservation as aforesaid; that both that part finished and unfin-

ished, and all the improvements, fixtures, and structures thereto appurtaining to the end that said property may be managed, controlled, and properly cared for under the orders of the Court until the final hearing hereof, with all proper orders, judgment, and decrees for the government of said receiver, and the safe and proper custody and management of said property, and that said receiver be required to give bond and security for the faithful discharge of his duties, and at the hearing your orator prays that a decree be rendered devesting all the right and title which the defendant has or may have or claim in and to said railroad, and all its fixtures, structures, improvements, and property of every nature and every part thereof in said territory of New Mexico and within the limits of your orator's said reservation, and vest them in your orator upon such terms and conditions as the Court may deem right and proper, having due regard to whatever rights and equities may be shown to properly belong to the parties hereto, both complainant and defendant, and the said Southern Pacific Railroad Company, its officers, agents, attorneys, and solicitors be restrained from trespassing, disposing, selling, or conveying said railroad or any part thereof pending the final hearing of this cause; that all orders and decrees be made transferring all said property to your said orator, and clothing your orator with the possession, control, and use of said property and use thereof, and to that end that proper writs of restitution and possession issue to carry into effect said order and decrees of your Honor's court.

And if mistaken in its special prayer, your orator prays

for such other, further, and general relief as your orator may be entitled to in the premises, etc.

(Note.—The defendant is required to answer all of the above special interrogatories.)

THE TEXAS & PACIFIC RAILWAY.

By H. M. HERMAN,

Its Solicitor.

JOHN F. DILLON, and

WAGER SWAYNE, of New York,

Of Counsel, and

A. J. FOUNTAIN,

Of Mesilla, N. M.

State of Texas, }
County of Dallas. } ss.

On this the 11th day of May, A. D. 1881, before me, personally appeared John C. Brown, vice-president and one of the officers of the Texas and Pacific Railway Company, and made oath that he has read the above bill subscribed by its attorney and solicitor, and that he knows the contents, and that the same is true of his own knowledge, except as to matters of information and belief, and as to those matters he believes them to be true.

JNO. C. BROWN.

Sworn to and subscribed this 11th day of May, 1881.

J. E. WOLF,

Notary Public, Dallas County, Texas.

EXHIBIT "A."

An act to incorporate the Texas & Pacific Railroad Company, and to aid in construction of its road, and for other purposes.

Sec. 8. That the right of way through the public lands be, and the same is hereby, granted to the said company for the construction of the said railroad and telegraph line, and the right, power and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands; and there is also hereby granted to said company grounds for stations, buildings, workshops, wharves, switches, sidetracks, turntables, water stations, and such other structures as may be necessary for the said railroad, not exceeding forty acres of land at any one point.

Sec. 9. That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for, there is hereby granted to the said Texas Pacific Railroad Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as such line may be adopted by said company, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same

shall not have been sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed. In case any of the said lands shall have been sold, reserved, occupied, or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company under the direction of the secretary of the interior in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate section first above named, and not including the reserved numbers. If, in the too near approach of the said railroad line to the boundary of Mexico, the number of sections of land to which the company is entitled cannot be selected immediately on the line of said railroad or in lieu of mineral lands excluded from this grant, a like quantity of unoccupied and unappropriated agricultural land in odd numbered sections nearest the line of said railroad may be selected as above provided; and the word "mineral," where it occurs in this act, shall not be held to include iron or coal; provided, however, that no public lands are hereby granted within the State of California further than twenty miles on each side of said road, except to make up deficiencies as aforesaid, and then not to exceed twenty miles from the lands originally. The term "ship's channel," as used in this bill, shall not be construed as conveying any greater right to said company to the water-front of San Diego bay than it may acquire by gift, grant, purchase, or otherwise, except the right of way as herein granted; and provided further, that all such lands so

granted by this section to said company which shall not be sold or otherwise disposed of as provided in this act within three years after the completion of the entire road shall be subject to settlement and pre-emption like other lands, at a price to be fixed by and paid to said company, not exceeding an average of $2.50 per acre for all lands herein granted.

Sec. 12. That whenever said company shall complete the first and each succeeding section of twenty consecutive miles of said railro l and put it in running order as a first-class road in all its appointments, it shall be the duty of the secretary of the interior to cause patents to be issued conveying to said company the number of sections of land opposite to and *continuous* with said completed road *to which shall be* entitled for each section so completed. Said company, within two years after the passage of this act, shall designate the general route of said road as near as may be, and shall file a map in the department of the interior, and when the map is so filed, the secretary of the interior, immediately thereafter, shall cause the lands within forty miles on each side of the designated route within the territories, and twenty miles in the State of California, to be withdrawn from pre-emption, private entry, and sale; provided, however, that the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads," approved May twenty, 1862, and the amendments thereto, shall be, and the same are hereby, extended to all of the lands of the United States on the line of the said road when surveyed except those hereby granted to said company.

Sec. 19. That the Texas Pacific Railroad Company shall be, and is hereby, declared to be a military and post road; and for the purpose of the insuring of the carrying of the mails, troops, munitions of war, supplies, and stores of the United States, no act of the company nor of any State or territory shall impede, delay, or prevent the said company from performing its obligations to the United States in that regard; provided, that said road shall be subject to the use of the United States for postal, military, and all other governmental purposes at fair and reasonable rates of compensation, not to exceed the price paid by private parties for the same kind of service, and the government shall at all times have the preference of the use of the same for the use aforesaid.

Sec. 23. That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco the Southern Pacific Railroad Company is hereby authorized (subject to the law of the State of California) to construct a line of railroad, from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to the said Southern Pacific Railroad Company of California by the act of July twenty-seventh, 1866; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.—Approved March 3d, 1871.

An act supplementary to an act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled: That the name and style and title of the Texas Pacific Railroad Company shall hereafter be "The Texas & Pacific Railway Company," and the said the Texas & Pacific Railway Company shall have, possess, and enjoy all rights, privileges, and franchises heretofore conferred upon the Texas Pacific Railroad Company.

Sec. 5. That the said Texas & Pacific Railway Company shall commence the construction of its road at or near Marshall, Texas, and proceed with its construction under the original act and this supplement, or in pursuance of the authority derived from any consolidation as aforesaid, westwardly from a point near Marshall and toward San Diego, in the State of California, on the line authorized by the original act, and so prosecute the same as to have at least one hundred consecutive miles of railroad from said point complete and in running order within two years after the passage of this act, and so continue to construct each year thereafter a sufficient number of miles, not less than one hundred, to secure the completion of the whole line, from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and said road from

Marshall, Texas, throughout the length thereof shall be of uniform gauge; provided, however, that the said company shall commence the construction of said road from San Diego eastward within one year from the passage of this act, and construct not less than ten miles before the expiration of the second year, and after the second year not less than twenty-five miles per annum in continuous line thereafter between San Diego and the Colorado river, until the junction is formed with the line from the east at the latter point or east thereof; and upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion; and it shall be lawful for said company to commence and prosecute the construction of its line from any other point or points on its line; but nothing in this act contained shall be so construed as to authorize the grant of any additional lands or subsidy of any nature or kind whatsoever on the part of the Government of the United States; provided, that said Texas & Pacific Railway Company shall be, and is hereby, authorized and required to construct, maintain, control, and operate a road between Marshall, Texas, and Shreveport, Louisiana, or control and operate any existing road between said points of the same gauge as the said Texas & Pacific Railroad; and that all roads terminating at Shreveport shall have the right to make the same running connections, and shall be entitled to the same privileges for the transaction of business in connection with the said Texas & Pacific Railway as are granted to roads intersecting therewith; provided, further, that nothing herein shall be construed as chang-

ing the terminus of the said Texas & Pacific Railway from Marshall as provided in the original act.

EXHIBIT "B."

Pacific R. R. Record.

Vol. 1, Page 521.

Department of the Interior.

General Land Office,

Washington, D. C., November 22, 1871.

Register and Receiver, Santa Fe, New Mexico.

Gentlemen: The Texas Pacific Railroad Company having filed a map of the proposed line of their road from El Paso to San Diego, Cal., as required by the 12th section of the granting act March 3d, 1871, I herewith transmit a map showing, as near as may be, the line of said road through the territory of New Mexico, together with the limit of 40 miles on each side of the route, and in accordance with the requirements of the act, you are hereby directed to withdraw from pre-emption or homestead entry or sale all the odd-numbered sections of land falling within said limits. The even numbered sections you will hold at the double minimum price of $2.50 per acre, and dispose of at that ratability, and under the pre-emption and homestead laws only.

As this *of* the first grant of lands and order of withdrawal pertaining to railroads in New Mexico, I call your attention:

1st. To the provisions of the homestead act, which limits entries on double minimum lands to 80 acres, ex-

cept to soldiers of the late war, who are allowed to take 160 acres, as indicated on page 6 of accompanying circular, and form of affidavit on page 26.

2d. In payment by pre-emptors, the party may pay with the military land warrants, or agricultural college scrip and cash. In payment with warrants or scrip, the warrant must be of the same denomination in acres as the tracts, and is receiveable acre for acre, rating the warrant or scrip at $1.25 per acre, and the additional payment must be made with cash at the rate of $1.25 per acre. The certificate of location must issue for the whole tract, and on the warrant or scrip location the receiver issuing an excess receipt for the cash and accounting for the money in his cash returns, but not bringing the acres into the cash footings, they appearing properly in his warrant abstract.

The register will issue no certificate of sale on such excess of payments.

3d. Where a party may establish his claim to either the odd or even sections within the limits of the grant, in accordance with the requirements of the pre-emption laws showing settlement prior to the withdrawal, he will be entitled to the land at $1.25 per acre.

The withdrawal will take place upon date of the receipt of this letter at your office, and you will immediately upon its receipt acknowledge same by letter to this office.

The map herewith indicates only the preliminary line of road and withdrawal, and the same will be adjusted permanently as the surveys shall progress and the company file their map of definite location. Until you re-

ceive further instructions from this office, however, you will be governed by the lines laid down on the map herewith.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

U. S. Landoffice at La Mesilla, N. M.,
May 19, 1881.

I hereby certify that the foregoing is a true and correct copy of the original letter of the commissioner of the general landoffice.

GEO. D. BOWMAN,
Register.

EXHIBIT "D."

Department of the Interior.

General Land Office,
April 19, 1881.

I, C. W. Holcomb, acting commissioner of the general landoffice, do hereby certify that the annexed, from page one to page twelve, both inclusive, are true and literal exemplifications of the originals on file in this office, being papers relating to the Southern Pacific Railroad, of New Mexico territory, filed under an act of Congress, approved March three, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

In testimony whereof, I nave hereunto subscribed my hand and name and caused the seal of this office to be af-

fixed at the city of Washington, on the day and year above written.

[Seal] C. W. HOLCOMB,
Acting Commissioner of the General Landoffice.

We, whose names are hereunto annexed, citizens of the United States, do hereby certify that under and by virtue of the provisions of chapter one of the laws of the territory of New Mexico, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved February 2d, 1878, have associated together for the purpose of forming a railroad corporation, and pursuant to the provisions of said act do declare and specify as follows:

1st. The name of the said corporation shall be the Southern Pacific Railroad Company of New Mexico.

2d. The purpose for which said corporation is formed shall be to construct and maintain and operate a railroad and telegraph line across that portion of the territory of New Mexico, between its western boundary and the Rio Grande, following as nearly as may be found practicable the 32d parallel of north latitude, the termini of said railroad and telegraph line being hereinafter more particularly stated and defined.

3d. The place where its principal business is to be transacted in the said territory is to be Santa Fe.

4th. The term for which it is to exist is to be fifty years.

5th. The number of directors is to be five. The name and residences of the persons who are appointed to act as such until their successors are elected and qualified are:

Names.	Residences.
Charles F. Crocker,	San Francisco, California.
Richard P. Hammond,	San Francisco, California.
John E. Foulds,	San Francisco, California.
William Breeden,	Santa Fe, New Mexico.
Lehman Speigelberg,	Santa Fe, New Mexico.

6th. The amount of the capital stock of the corporation is to be ten million dollars, that being the amount actually required for the purposes of the corporation as estimated by competent engineers, and the number of shares into which it is divided is one hundred thousand shares, of one hundred dollars each.

7th. The amount of the capital stock actually subscribed is two thousand shares, and by the following persons:

	No. of Shares.
Charles F. Crocker, San Francisco, Cal.....	1980
Richard P. Hammond, San Francisco, Cal.....	5
John E. Foulds, San Francisco, Cal.....	5
William Breeden, Santa Fe, New Mexico.....	5
Lehman Speigelberg, Santa Fe, New Mexico...	5
	2,000

8th. The termini of the road are to be as follows: The western terminus at a point of connection with the Southern Pacific Railroad (of Arizona) on the western bound-

ary of the said territory of New Mexico, as near as may be found practicable at the intersection of said western boundary with the 32d parallel of north latitude; the eastern terminus to be on the Rio Grande, at a point to be selected by the company between Mesilla and the southern boundary of said territory.

9th. The estimated length of the road is two hundred miles as near as may be.

10th. That at least ten per cent of its capital stock has been paid to Richard P. Hammond, who resides at San Francisco, Cal., as the treasurer of the intended corporation; said sum of money amounting to twenty thousand dollars.

In witness whereof, we have hereunto subscribed our names this the 14th day of April, 1879.

CHARLES F. CROCKER.
RICHARD P. HAMMOND.
J. E. FOULDS.
WILLIAM BREEDEN.
LEHMAN SPEIGELBERG.

County of Santa Fe.
Territory of New Mexico, } ss.

On this the 14th day of April, A. D. 1879, personally appeared before the undersigned, clerk of the District Court for the First Judicial District of the territory of New Mexico, the above-named Charles F. Crocker, Richard P. Hammond, J. E. Foulds, William Breeden, and Lehman Speigelberg, and acknowledged that they signed

the foregoing instrument of writing for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court the day and year last above mentioned.

[Seal] JOHN H. THOMPSON,
Clerk.

Territory of New Mexico, }
County of Santa Fe. } ss.

Richard P. Hammond, being duly sworn, deposes and says that he resides at San Francisco, State of California; that he has been appointed a treasurer to the intended corporation by the subscribers to the foregoing articles of incorporation, who have subscribed the same in person, to receive the moneys required by the laws of the territory of New Mexico referred to in said articles to be paid upon said subscriptions before said articles are filed; that the requisite amount of the capital stock of the intended corporation has been actually subscribed, to wit, two thousand shares, and that ten per cent thereof, to wit, the sum of twenty thousand dollars, has been actually paid to him for the benefit of said corporation, and the amount actually paid in is twenty thousand dollars.

RICHARD P. HAMMOND,
Treasurer.

Subscribed and sworn to before me this the 14th day of April, A. D. 1879.

[Seal] JOHN H. THOMPSON,
Clerk of the First Judicial District Ct., N. M.

[Endorsed]:

The Southern Pacific Railroad Company of New Mexico.

Secretary's Office, Territory of New Mexico.

Received and filed for record April 14th, 1879, at 10:45 A. M., volume 1, Miscellaneous Records, pages 76, 77, 78, 79.

W. G. RITCH,
Secretary of N. M.

Secretary's Office, Territory of New Mexico.

I, W. G. Ritch, secretary of the territory of New Mexico, do hereby certify that I have compared the within and foregoing transcript of the certificate of incorporation of the Southern Pacific Railroad Company (of New Mexico), filed and entered of record in this office April 14th, 1879, at 10:45 A. M., with the original thereof, and that the same is a true and correct copy of the said original.

In witness whereof, I have hereunto set my hand and the seal of the secretary of this territory May 5th, A. D. 1880.

[Seal] W. G. RITCH,
Secretary.

Secretary's Office, Territory of New Mexico.

I, W. G. Ritch, secretary of the territory of New Mexico, do hereby certify that there is on file of record in this office a certificate of incorporation under the name of the Southern Pacific Railroad Company (of New Mexico), stated in the body of the said certificate to be under and by virtue of the provisions of chapter one of the laws of the territory of New Mexico, entitled "An act to provide

for the incorporation of railroad companies and the management of the affairs, and to other matters relating thereto," approved February 2d, 1878, and the purpose for which said corporation is formed shall be to construct, maintain, and operate a railroad and telegraph line across that portion of the said territory of New Mexico between its western boundary and the Rio Grande following as nearly as may be found practicable the 32d parallel of north latitude. I further certify that said certificate of incorporation was filed and recorded in volume one, Miscellaneous Records, pages 76, 77, 78, and 79, on the 14th day of April, A. D. 1879.

In testimony whereof, I hereunto set my hand and official seal this the 4th day of May, 1880.

[Seal] W. G. RITCH,
Secretary N. M.

State of California,
City and County of San Francisco. } ss.

Charles F. Crocker, being duly sworn, says that he is the president of the Southern Pacific Railroad Company (of New Mexico), and that the following is a true list of the officers of said company, with the full name and official designation of each, to wit: Charles F. Crocker, president; William Breeden, vice-president; Richard P. Hammond, treasurer; John E. Foulds, secretary; George E. Gray, chief engineer.

CHARLES F. CROCKER,
President of the Company.

Sworn and subscribed to before me this the 14th day of June, A. D. 1880.

[Seal] CHARLES J. TORBERT,

Notary Public in and for the City and County of San Francisco, State of California.

I, J. E. Foulds, secretary of the Southern Pacific Railroad Company (of New Mexico), do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing laws of the territory of New Mexico, and the following seven pages are a full, true, and correct copy of the articles of incorporation of the company.

In witness whereof, I have set my name and the corporate seal of the company, June 14th, 1880.

[Seal] J. E. FOULDS,

Secretary of the Southern Pacific Railroad Company of New Mexico.

9 Nassau St., New York, July 1st, 1880.

Hon. Carl Schurz, Secretary of the Interior, Washington, D. C.

Dear Sir: I enclose you herewith a copy of the articles of incorporation of the Southern Pacific Railroad Company (of New Mexico), which is duly certified to by the secretary of the company, under its corporate seal, and due proofs of its organization under the same as required by the act of Congress, approved March 3d, 1875, "granting to railroads the right of way through the public lands of the United States," together with copy of the territo-

rial law of New Mexico, under which the company was organized, with certificate of the secretary of the territory, that the same is the existing law; also his certificate of the filing of the articles of association in the office of the said secretary of the territory, with the date of said filing; also the official statement of the secretary of the company that the organization has been completed, and that the company is fully authorized to proceed with the construction of its road according to the existing law of the territory, and that the copy of the articles filed with the secretary of the interior is correct; and also a true list duly verified by the sworn statement of the president under the seal of the company, showing the names and designation of its respective officers, required by the circular of instructions of the department of the interior, dated March 9th, 1878. Very respectfully yours,

C. P. HUNTINGTON,
A. & A.

I, W. B. Walton, clerk of the District Court of the Third Judicial District of the territory of New Mexico, do hereby certify that the above and foregoing is a true and correct copy of the bill in chancery, wherein the Texas Pacific Railroad Company is complainant and the Southern Pacific Railway Company of New Mexico et al. are defendants, as the same appears of record in my office.

Witness my hand and the seal of said Court this 25th day of October, A. D. 1895.

[Seal] W. B. WALTON,
Clerk.

[Endorsed]: No. 587. Ex. 22. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 22. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 23.

M. N. (4-207.) S. S. M.

"F." Department of the Interior.

General Landoffice,

Washington, D. C., October 4th, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed copy of a letter from the register of the United States landoffice at Los Angeles, dated April 1, 1873, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

Communications to this office requiring an answer should be accompanied by a P. O. stamp.

U. S. Landoffice, Los Angeles, California.

Register's Office, April 1, 1873.

Hon Willis Drummond, Com. Genl. Landoffice, Washington, D. C.

Sir: In reply to your letter "A" of March 8, 1873, I have to report that your letter of Sept. 27, 1871, ordering a

withdrawal of lands for the Texas Pacific Railroad was received at this office and filed on the 15th Oct., 1871.

Very respectfully,

ALFRED JAMES,
Register.

[Endorsed]: Landoffice at Los Angeles, Cal., April 1, 1873. Register reports in relation to Texas P. R. R. withdrawal. P. Alfred James, Register. 1-255. No Answer Reqd. Buxton. F. Apl. 16, 1873.

(587.) Ex. 23. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 23. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 24.

J. I. P.

A. M.
E. H. H.
M. C. M. N.

(Vignette)

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Nov. 27, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original, with its endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal]

WM. H. SIMS,
Acting Secretary of the Interior.

E. W.

[Stamped in red ink:] Department of the Interior. Jul. 30, 1879.

Texas & Pacific Railway Company.

Office, 50 Exchange Place,
New York, July 1st, 1873.

Hon. C. Delano, Secretary of the Interior, Washington, D. C.

Sir: In conformity with section 13 of the charter of this company, I have the honor to submit herewith a report exhibiting the financial situation of the Texas & Pacific Railway Co. on the 1st day of July, 1873, embracing in detail its business for the year ending at that date; together with a description of the lines of road surveyed and fixed upon for construction.

I am very respectfully yours,
THOMAS A. SCOTT,
President.

TEXAS AND PACIFIC RAILWAY COMPANY.

ANNUAL REPORT

to

DEPARTMENT OF THE INTERIOR.

July 1st, 1873.

Statement of the Financial Condition of the Texas and Pacific Railway Company on the first day of July, 1873.

Amount of money received and expended by the Texas and Pacific Railway Company from July 1st, 1872, to July 1st, 1873.

Receipts:	
From transportation of freight and passengers	$333,380.86
From accounts collectible	58,676.44
From interest	2,443.17
From cash on hand date of last report	79,335.18
From operating expenses unpaid (payrolls, etc.	23,028.16
	$496,863.81
Expenditures:	
For operating 66½ miles of road	$256,562.19
For reduction of assumed debts of other roads	47,810.39
For bills payable	89,565.10
For interest and exchange	15,917.71
For improvement of road	8,802.02
For change of gauge	10,309.80
For general expenses	39,702.63
For supplies on hand	25,906.43
For cash on hand this date	2,287.54
	$496,863.81

Operating receipts and expenditures Texas and Pacific Railway Company from July 1st, 1872, to July 1st, 1873—66½ miles of road.

Receipts:	
From passengers	$104,392.44
From freight	223,211.99
From U. S. Mails	5,328.00
From miscellaneous	448.43
	$333,380.86
Expenditures:	
For conducting transportation	$ 51,994.43
For maintenance of roadway	111,044.00
For cost of running and maintenance of motive power and cars	62,370.20
For general expenses	31,153.56
	$256,562.19

Receipts over expenditures, $76,818.67.

Indebtedness of the Texas and Pacific Railway Company, and the various kinds thereof, on the first day of July, 1873:

Capital Stock.

Subscribed $2,000,000. Paid 1st installment, $200,000 ..... $2,000,000

Bonded Debt.

The bonds of the company consist of two kinds, viz: First mortgage six per cent Gold Construction Bonds, dated June 1st, 1872; mature June 1st, 1912. Principal and interest payable in New York or London at option of holder. Denomination, $1,000. Authorized issue, forty thousand dollars per mile of constructed and equipped road.

First Mortgage Land Grant.

Seven per cent currency bonds, dated July 1st, 1872; mature July 1st, 1912. Principal and interest payable in New York. Denomination, $1,000. Authorized issue, $20,000,000. Of the Construction Bonds none have been issued.

Of the Land Bonds there has been issued in the purchase of consolidated roads.....	$4,000,000
Debt So. Pacific R. R. Co. to State of Texas assumed by the Texas & Pacific Ry. Company	209,126.31
Floating debt.....	790,095.71
Interest coupons on land bonds due this date.....	140,000.71
	$7,139,222.02

Assets Texas & Pacific Railway Co. July 1, 1873:

Roads Consolidated.

66½ miles constructed and equipped road, from Shreveport to Longview, cost....	$3,933,601.55
Property and franchises, So. Trans. Continental Ry. Co.....	1,000,000.00
Improvement on road in operation.....	19,111.82
Supplies on hand.....	29,406.43
Stock subscriptions uncalled.....	1,800,000.00
Cash and cash assets.....	41,661.42
Bal. to debit profit and loss.....	315,440.80
	$7,139,222.02

Names and residences of officers and stockholders:

Officers.

President,	Thomas A. Scott,	Philadelphia.
Vice-president,	William A. Wallace,	Clearfield, Pa.
Treasurer,	Edwards Pierrepont,	New York.
Secretary,	Emanuel B. Hart,	New York.

Directors.

Thomas A. Scott,	Philadelphia.
Edwards Pierrepont,	New York.
William A. Wallace,	Clearfield, Pa.
J. W. Throckmorton,	McKinney, Texas.
A. J. Cassatt,	Philadelphia.
Albert Hewson,	Philadelphia.
Joseph Lesley,	Philadelphia.
H. C. Spackman,	Philadelphia.
William S. McManus,	Reading, Pa.

Stockholders.

Thomas A. Scott,	Philadelphia, Pa.
William A. Wallace,	Clearfield, Pa.
A. J. Cassatt,	Philadelphia, Pa.
H. C. Spackman,	Philadelphia, Pa.
J. W. Throckmorton,	McKinney, Texas.
Joseph Lesley,	Philadelphia, Pa.
Edwards Pierrepont,	New York City.
William S. McManus,	Reading, Pa.
Albert Hewson,	Philadelphia, Pa.
John McManus,	Reading, Pa.
W. C. Kimball,	San Diego, Cal.

A. C. Babcock,	Canton, Ill.
H. W. Gray,	New York City.
J. S. Harris,	San Diego, Cal.
California & Texas Railway Construction Co.,	Pennsylvania.
Marshall O. Roberts,	New York City.
E. W. Rice,	Washington, D. C.
Samuel Tate,	Jackson, Miss.
W. T. Walters,	Baltimore, Md.

Number of miles of road constructed from July 1st, 1872, to July 1st, 1873:

109 miles completed.

355 miles, graded, bridged, and tied.

The expenses of construction do not enter into the accounts of this company until the sections now in process of construction are completed and accepted by the proper authorities.

Description of the lines of road surveyed and fixed upon for construction:

Since the date of the last report to the department, July, 1872, the engineers in charge of the surveys have run over 8,000 miles of instrumental lines, and made 15,000 miles of reconnoissance, developing a country 1,500 miles long east and west, and 150 miles in width north and south, so thoroughly that the line of location from Red river to the Pacific can very nearly be determined.

The lines of road surveyed and in part undergoing construction are as follows:

Southern Division.—Longview, Texas, to Fort Worth.

Jefferson Division.—Marshall to Texarkana.

Transcontinental Division.—Texarkana to Fort Worth.

Brazos Division.—Fort Worth to the 100 meridian.

Pecos Division.—100 Meridian to Rio Grande river.

New Mexico Division.—Rio Grande river to the Pimas Villages.

California Division.—Pimas Villages to San Diego, Cal.

Distances:	Miles.
Marshall to Texarkana	69
Texarkana to Fort Worth	237
Longview to Fort Worth	155
Fort Worth to San Diego	1,419
	1,880

Table of grades, Longview to San Diego.

	Miles Ascending.	Miles Descending.
0 to 10 feet per mile	87	133
10 to 20 feet per mile	164	141
20 to 30 feet per mile	74	61
30 to 40 feet per mile	73	91
40 to 50 feet per mile	42	53
50 to 60 feet per mile	77	91
60 to 70 feet per mile	58	48
70 to 80 feet per mile	24	32
80 to 90 feet per mile	8	6
90 to 100 feet per mile	6	2
100 to 110 feet per mile	29	28
Level, 289 miles.		
Total Ascent,	23,169 feet.	
Total Descent,	23,497 feet.	

Greatest altitude reached in crossing the continent, 6,355 feet.

The road under construction from Longview to Fort Worth, known as Southern Division, passes almost due west from Longview, Texas, following the valley of the Sabine for 50 miles through the counties of Upshur and Wood, crossing the Sabine river, in Kauffman county, leaves the timber 25 miles west of the Sabine, strikes the prairie, and at Dallas crosses the Trinity river, following the valley of that river to Fort Worth, distance 155 miles.

Jefferson division starts from Marshall, Texas, bears due north to Jefferson, thence in a northeasterly direction, crossing the Sulphur river about ten miles west of the State line, connecting with the Transcontinental Division five miles west of a point of the State boundary known as Texarcana; distance 69 miles.

Transcontinental Division passes through the counties of Bowie, Red River, Lamar, and Fannin, following the divide between the Red and Sulphur rivers into Grayson county, and through the county towns of Clarksville, Bonham, Paris, and Sherman. From Sherman it runs almost directly south, passing through Denton and Tarrant counties to Fort Worth; distance 237 miles.

The foregoing comprise the three lines east of Fort Worth undergoing construction.

The line from Fort Worth to San Diego, upon which the surveys have been made, has been divided into the following divisions:

Brazos Division.—Extending from Fort Worth, Texas to the 100 meridian; distance about 175 miles: The surveys on this division have demonstrated as practicable the two following routes, the latter of which will probably be adopted:

1. The one known as the Southern Route, starting from Fort Worth, following the south fork of the Trinity river, crossing the Brazos river near the mouth of the Palo Pinto creek, following that creek to its head; thence to the head waters of Leon river; thence either north or south of the Deep creek mountains; thence westwardly on the divide between the Brazos and Colorado rivers, striking the 100 meridian in latitude 31° 30: This line runs through a heavy country, with maximum grades of 66 feet; is fairly timbered, with abundance of material and rock for structures; water over a portion of it is scarce.

2. The northern line leaving Fort Worth follows the south fork of Trinity river to near Weatherford; thence strikes directly north through Parker and in the northern boundary of Palo Pinto county, keeping to the north of the Brazos and crossing it near the north of Caddo creek; thence along its south valley to near the mouth of Hubbard's creek, whence it crosses again to the north valley and recrosses the Brazos just east of Fort Griffin, following one of its tributaries; avoiding the great bend of the Brazos, and crossing Clear fork of the Brazos, strikes California creek near the mouth of Otey's creek, which it follows to Double mountain fork. All the lands on this division are susceptible of cultivation, are rolling, well

watered, a portion finely timbered, and fair stock ranges. It includes a large portion of the great wheat-growing region of Texas, and is now receiving a large population of northern immigration. Its crop consist of cotton, wheat, and corn, and is well adapted to the production of all the southern fruits.

Pecos Division.—Extending from the 100 meridian to the Rio Grande river; distance 412 miles: Two general lines have been run across this division.

The northern line starts from Fort Phantom Hill, lat. 32°, 35′, 30″, long. 99°, 38′, 30″, by our observations, passing west, up North Elbow creek, turns the head waters of the Red Fork of the Colorado, crosses North Concho river, and is a tangent line for 80 miles after striking the Staked Plains, long. 102° west, and crosses the Pecos at the mouth of Delaware creek; thence following the Delaware to its head, climbs the Guadalupe mountain range in order to reach Guadalupe Pass, at an altitude of 6,355 feet, the highest elevation made in crossing the continent.

From the head of Delaware creek to Independence Springs, 17½ miles, the grade is 60 feet. The approach to the pass is made with 116 feet grade for 7½ miles.

In descending the west side of the mountains there are no continuous slopes, separate sharp spurs push in, and ravines that have to be crossed 400 feet high.

The total descent is 2,069.5 feet, made with an average grade of 116 feet.

From the foot of this road the line runs to the Salt lakes, passing to the south of the tanks, crosses the Los

Canudes at the Cottonwood Springs; strikes south and passes Hucco mountains through or south of the old stage route, and strikes the valley of the Rio Grande just north of Isletta and near Fort Bliss.

Two southern lines not yet completed are being examined; one follows down the Rio Grande from Fort Bliss, turns the Sierra Blanco north of Fort Quitman, passes due east through Carissa Pass, turning the Guadalupe mountains on the south, strikes the head waters of Toga creek, follows it to the Pecos, thence strikes over a rolling country to the head waters of the North Concho river, near the Big Springs; thence in a northeasterly direction on as near a direct line as practicable, intersecting the southern line of the Brazos division on the 100 meridian in lat. 31°, 50′. The other line passes the mountain about 40 miles southeast of Fort Quitman and north of Castle mountains, thence by the North Concho to Fort Chadburne. After crossing the Pecos, the Guadalupe range of mountains is encountered, giving the heaviest work and grades to overcome of any portion of the line in crossing the continent.

Land.—To the Pecos river is a rolling prairie, fairly watered; valleys of the streams are susceptible of high cultivation and yet open to settlement. The eastern portion is traversed by the Colorado, Concho, and Pecos rivers.

The uplands are the finest grazing portions of Texas: The lands adjoining and east of the Pecos are known as the Staked Plains; we cross them at their narrowest part some 60 to 80 miles in width. They have no running

water, but afford good pasturage. The country west of the Pecos is better watered and partially timbered. Heavy pineries are found on the slopes of the mountains, which either in continuous or detached ranges occupy most of the country from the Pecos to the Rio Grande. It is a fair pasturage country and is now used extensively for cattle and sheep; it also abounds in minerals.

North of this division lies the Pan Handle country, said to have large bodies of very fine agricultural and pasturage lands, to be well watered and the greater part susceptible of cultivation.

New Mexico Division.—Extending from the Rio Grande river to the Pimas villages; distance 388.85 miles.

Three general lines have been run across this division, all of them starting at Fort Bliss and following up the Rio Grande Valley to near Mesilla, keeping the two northern lines on or about the same ground to the Burro mountains.

One line to the north follows down the valley of the San Domingo, to the Gila, thence to the Pimas Villages; this line, owing to heavy grades and numerous canyons, is impracticable.

The center line passes westwardly from the Burro mountains, along latitude 32°, 40′, passing the Peloncello range at Peloncello Pass, and the Che-ra-ca-hin mountains at Railroad Pass; thence down the Arayropa canyon to the San Pedro, near Camp Grant, down the San Pedro to the Gila, and down the valley of the Gila to the Pimas Villages.

The Santa Cruz Valley line was run, leaving the last-named line at the San Pedro, running through Cienega

Pass, through to near Tucson, thence across the plains, following the valley of the Santa Cruz to the Pimas villages.

A line is now being run from the crossing of the San Pedro about lat. 31°, 30′, through the Dragoon mountains, and immediately on the border of Mexico, which will soon be completed to the Rio Grande. From indications this line will probably be considered impracticable.

The route that will evidently be adopted through New Mexico and Arizona is known as the "center line," commencing at Fort Bliss, running up the valley of the Rio Grande to La Mesilla, due west from La Mesilla, and passing down the Arayropa canyon to the Gila, and thence to the Pimas villages.

The valley of the Rio Grande, up which we run 60 miles, is a fine agricultural country, is well populated, produces large crops of cereals, fruits, and grapes, and grazes immense herds of cattle and sheep. This is the garden spot of New Mexico.

Passing west of the Rio Grande we encounter the high table-lands of New Mexico, lacking in water, but affording good grazing; the valleys are well adapted to agriculture.

The upper valley of the Gila, San Pedro, and the San Domingo are remarkably productive, easily irrigated, and well adapted to raising cotton and wheat.

Fine forests and pine timber are found in the Chi-ri-ca-hin range on Mt. Graham, and in the Calistro mountains.

This division passes near the mining districts north

and south of the Gila, and within easy reach of the great mines of Arizona.

California division extends from the Pimas villages to San Diego (distance 444 miles), follows the Gila river to Fort Yuma, cutting off the great bend of the Gila, by a direct natural route with easy grades and light work; thence by the adopted line from Fort Yuma, crosses the desert along the eastern base of the Sierra Nevada, through San Gorgonio Pass, across San Jacinto plains to Temecula, striking the ocean at the mouth of Rio San Luis; thence down the coast to San Diego.

It is possible that examinations may make it desirable to cross the Gila just below the great bend pass, to the north of that river, on a direct line to and crossing the Colorado river, about 30 miles north of Fort Yuma, connecting with the adopted line about lat. 33°.

That portion of this division watered by the Gila river is already partially settled, and the crops are only limited by the supply of water from the Gila river and mountain streams for the purpose of irrigation.

That portion of the Colorado river runs diagonally across the desert, keeping near the east base of the Sierra Nevada.

The New river portion will some day be brought under cultivation by the overflow from the Colorado, and that portion below the level of the sea can be irrigated from the Colorado.

The soil is excellent, a very small proportion being sand; grass grows on portions, and for three-fourths of the entire distance it only needs water to bring it under

cultivation. The west slope of the Sierra Nevada takes in the valley of the Rio Santa Ana, Rio Temescal, Rio Temecula, and Rio San Luis.

The amount of land suitable for cultivation is limited to the valley, but the table-lands, or mesas, are fair grazing districts, and support large herds of cattle and sheep.

State of Pennsylvania,
City and County of Philadelphia. ss.

Thomas A. Scott, of the said city and county, being duly sworn, deposes and says that he is the president of the Texas and Pacific Railway Company, and that the foregoing statement of the business of the said company for the year ending June 30, 1873, is true to the best of his knowledge and belief.

THOMAS A. SCOTT.

Sworn to before me this first day of July, A. D. 1873.

[Notarial Seal] HENRY C. SPACKMAN,
Notary Public.

[Endorsed]: Texas & Pacific. Department of the interior. Received 30 July, 1873. Dated 1 July, 1873. From Thos. A. Scott, Prest., 50 Exchange Place, N. York. Subject: Submits report of Texas & Pacific Railway Co., for the year ending 30th June, 1873. Action: 1 Augt., 1873. Respectfully referred to the (O.K.) Ack'd. Filed Chief Clerk. Registered 1—730.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No.

24. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 25.

J. I. P. (Vignette) A. M.

J. T. S.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Nov. 27, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original, with its endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal] WM. H. SIMS,

Acting Secretary of the Interior.

E. W.

Thos. A. Scott, Prest.

Frank S. B———, } Vice-Prests.
John C. Brown, }

Geo. D. Krumbhaar, Treasurer.

C. E. Satterlee, Secy.

Executive Office Texas and Pacific Railway Company,
275 South Fourth Street,
Philadelphia, Pa., Sept. 28, 1876.

Hon. Z. Chandler, Secretary of the Interior, Washington, D. C.

Sir: In obedience to section 13 of the charter of this company, dated March 3, 1871, I have the honor to submit herewith a report of the operations of the Texas and Pacific Ry. Company for the year ending June 30, 1876. I am,

Very respectfully yours,

THOMAS A. SCOTT,

Prest.

V. P.

ANNUAL REPORT

of the

TEXAS AND PACIFIC RAILWAY COMPANY

for the Year Ending

June 30, 1876,

to the

DEPARTMENT OF THE INTERIOR.

Washington, D. C.

Annual Report of the Texas and Pacific Railway Company for the Year Ending June 30, 1876.

The Texas and Pacific Railway Company was chartered by act of Congress March 3, 1871.

Capital stock authorized 50,000,000

Capital stock issued 6,073,000

Miles of road in operation:

From Shreveport to Eagle Ford, Texas 195½

From Marshall, Texas, to Texarkana 74½

From Sherman, Texas, to Paris 64

Total miles in operation, ... 334

Miles of road completed since last report, 8.

The company have 110½ miles of road under construction to be completed by the first of August 1876, as follows:

Between Paris and Texarkana .....87 miles

Between Eagle Ford and Fort Worth .23½ miles

A full description of the line of road surveyed and fixed upon for construction was given in the report made to the department of the interior July 1, 1874.

Statement of Receipts from all sources and how applied for the year ending June 30, 1876.

By receipts from:

Cash on hand July 1, 1875	12,411.66
Material on hand July 1, 1875	83,161.64
Accts. collectible July 1, 1875.....	64,284.72
Transportation receipts	1,595,156.10
Town lot sales	2,967.10
Loans	15,000.00

Coupons county bonds	13,711.20
First Mtge. $8,000 per mile bonds	1,428,000.00
Consolidated $17,000 per mile bonds	230,000.00
Material received from Con. Co.	195,732.32
Interest and exchange	988.83
	$3,641,413.57

To payments for:		
Transportation expenses		894,694.44
Construction accounts		153,854.84
Land department		47,447.86
Legal department		31,314.51
Bills payable		334,268.76
General expense account		127,007.86
Taxes and insurance		124,268.38
Interest and premium on gold		283,579.49
Discount on bonds		268,420.98
Sinking fund Texas loan		3,997.63
Accounts payable		374,415.00
Cash on hand June 30, '76	591,520.49	
Material on hand June 30, '76	314,846.56	
Accts. collectible June 30, '76	58,239.92	
Decrease in accts. payable	33,536.85	998,143.82
		$3,641,413.57

Indebtedness of the Texas and Pacific Railway Company, June 30, 1876.

First mortgage 6% gold construction bonds, limited to $8,000 per mile of road, dated May 15, 1875; payable March 1, 1905	1,428,000

Consolidated mtge. 6% gold construction bonds, dated June 1, 1875; payable June 1, 1905, $17,000 per mile	6,556,000
Income land grant 7% currency bonds, bonds, dated May 15, 1875; payable June 1, 1905; limited to an issue of $8,908,000	5,032,000
First mortgage 6% gold construction bonds, (old issue), $40,000 per mile. The amount of these bonds outstanding at date of last report was $10,093,000. Since which time there has been withdrawn by the substitution of the new construction bonds, $9,128,000. Leaving outstanding as collateral on obligations not yet matured, $965,000. As a resource to meet obligations that are a lien upon these 965 bonds, 400 of the new first mtge. bonds of the Co. have been placed in trust	400,000
Land grant bonds—old issue	2,922,000
(These bonds are in process of withdrawal by exchange for the new income and land grant bonds, $6,330,000 having been so retired during the past year, and $2,483,000 of the balance outstanding are under agreement to be returned and exchanged for new bonds.	
Unpaid coupons, land grant bonds	614,565

(All but 15% of this amount is under agreement to be funded in new income and land grant bonds at par.)	
Fractional scrips redeemable in bonds of the company on presentation	67,439
School fund loan State of Texas	196,888.27
Accrued interest on bonded debt	204,680
Floating indebtedness	705,855.54
($287,000 of this amount is for rails and fastenings purchased in May for road under construction.)	
	$18,127,427.81

Transportation receipts and expenses for the year ending June 30, 1876.

Receipts:	
From passengers	402,518.65
Freight	1,137,900.17
Express	12,592.99
Mail	30,794.74
Telegraph	8,491.11
Miscel.....	2,858.44
Total,	$1,595,156.10
Expenses:	
Conducting transportation	308,011.33
Motive power	231,015.18
Maintenance of way	219,085.65
Maintenance of cars	91,259.11
General Expenses	45,323.17
Total,	$894,694.44

Net earnings $700,461.66

Proportion of expenses to earnings 56%

The details of the earnings and expenses of the road are contained in the Fifth Annual Report of the Company filed herewith.

Equipment June 30, 1876.

Locomotives:

In running order	25
Used as stationary engines	2
Not in use—broad gauge	1
Total locomotives,	28

Cars:

Passenger, 1st class	7
Passsenger, 2d class	8
Passenger, directors,	1
Passenger baggage combination	3
Baggage, mail, and express	7
Box	202
Stock	82
Cabooses	19
Flat	209
Boarding	5
Wrecking	2
Pile driving	1
Total cars,	546

Names and residences of officers and directors of the Texas & Pacific Railway Co:

Officers.

President,	Thomas A. Scott,	Philadelphia.
Vice-president,	Frank S. Bond,	Philadelphia.
Vice-president,	John C. Brown,	Pulaski, Tenn.
Treasurer,	G. D. Krumbhaar,	Philadelphia.
Secretary,	C. E. Satterlee,	Philadelphia.
Gen'l. Supt.,	Geo. Noble,	Marshall, Texas.
Auditor,	T. D. Maurer,	Marshall, Texas.
Land Comr.,	W. H. Abrams,	Marshall, Texas.

Directors.

Thos. A. Scott,	Philadelphia.
Frank S. Bond,	Philadelphia.
Matthew Baird,	Philadelphia.
H. H. Houston,	Philadelphia.
R. D. Barclay,	Philadelphia.
W. S. McManus,	Reading, Pa.
John C. Brown,	Pulaski, Tenn.
Marshall O. Roberts,	New York.
Henry G. Stebbins,	New York.
A. G. Marquand,	New York.
Alfred Gaither,	Cincinnati, Ohio.
W. C. Hall,	Louisville, Ky.
T. S. Nesmith,	San Diego, Cal.
W. N. Harrison,	Jefferson, Texas.
W. T. Walters.	Baltimore, Md.

Names and residences of the stockholders of the Texas and Pacific Railway Co.:

Thomas A. Scott,	Philadelphia.
H. W. Gray,	New York.
W. T. Walters,	Baltimore.
J. S. Harris,	———
Albert Hewson,	Philadelphia.
H. C. Spackman,	Philadelphia.
H. J. Cossatt,	Philadelphia.
Joseph Lesley,	Philadelphia.
Matthew Baird,	Philadelphia.
H. H. Houston,	Philadelphia.
R. D. Barclay,	Philadelphia.
F. S. Bond,	Philadelphia.
F. S. Bond, in trust,	Philadelphia.
M. O. Roberts,	New York.
A. T. Marguand,	New York.
W. S. McManus,	Reading, Pa.
Alfred Gaither,	Cincinnati, Ohio.
W. C. Hall,	Louisville, Ky.
T. S. Nesmith,	San Diego, Cal.
W. N. Harrison,	Jefferson, Texas.
J. N. McCullough,	Pittsburg, Pa.
H. G. Stebbins,	New York.
R. D. Barclay, in trust,	Philadelphia.

M. Baird, J. McManus, T. S. Bond, W. T. Walters, A. Gaither,	Trustees,	Cal. & Texas Ry. Co., Philadelphia.

State of Pennsyvania,
City and County of Philadelphia. }

Be it remembered that on this twenty-seventh day of September, A. D. 1875, before me, the subscriber, a commissioner for the State of Pennsylvania, duly qualified, personally came Thomas A. Scott, president of the Texas and Pacific Railway Company, personally known to me, who being duly sworn, deposeth and saith that he is the president of said corporation; that he has read the foregoing report of the business of the Texas and Pacific Railway Company for the year ending June 30, 1876, and that the statements therein contained are true to the best of his knowledge and belief.

THOMAS A. SCOTT,
Pres.

Sworn and subscribed before me at Philadelphia aforesaid the day and year above written.

[Seal] HENRY C. SPACKMAN,
Notary Public.

[Endorsed]: Texas & Pac. R. W. Department of the interior. Lands and railroads. Received 28 Sept., 1876. Dated 28 Sept., 1876. From Thos. A. Scott, Pres. Tex. & Pac. R. W. Co., Philadelphia, Penn. Subject: Transmits annual report of Texas & Pacific R. W. Co., for year ending 30 June, '76. Action: 187—. Respectfully referred to the commissioner of the general landoffice. Ackd. & filed 28 Sept., 1876. Registered 2, —— 841. ————, Chief Clerk.

(587.) Ex. 25. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 25. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 26.

J. I. P. (Vignette) A. M.

J. T. S.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Nov. 27, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original, with its endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal] WM. H. SIMS,

Acting Secretary of the Interior.

E. W.

Thos. A. Scott, Pres.

Frank S. Bond, } Vice-Presets.
John C. Brown, }

Executive Office Texas & Pacific Railway Company, 275 South Fourth street.

Philadelphia, Pa., Oct. 1, 1877.

Hon. Carl Schurz, Secretary of the Interior, Washington, D. C.

Sir: In obedience to section 13 of the charter of this company, dated March 3, 1871, I have the honor to submit herewith a report of the operations of the Texas & Pacific Railway Company for the year ending June 30, 1877.

I am,

Very respectfully yours,

THOMAS A. SCOTT,

Pres. Tex. & Pacific Railway Company.

ANNUAL REPORT.

of the

TEXAS AND PACIFIC RAILWAY COMPANY,

to the

DEPARTMENT OF THE INTERIOR.

Washington, D. C.,

July 1, 1877.

Annual Report of the Texas & Pacific Railway Company for the Year Ending June 30, 1877.

The Texas & Pacific Railway Company was chartered by act of Congress, March 3, 1871.

Capital stock authorized	$50,000,000
Capital stock issued	7,483,400

Miles of road in operation:

	Main line.	Sidings.
Shreveport Division: From Shreveport to Marshall	39.96	6.36
Southern Division: From Marshall to Fort Worth	179.73	15.09
Jefferson Division: From Marshall to Texarkana Junction	69.05	4.60
Transcontinental Division: From Texarkana Junction to Sherman	155.12	10.89
Total	443.86	36.94

Since the date of the last report, June 30, 1876, this company has completed, fully equipped, and put in operation 111 miles of road, as follows:

From Paris to Texarkana	87
From Eagle Ford to Fort Worth	24
Total,	111 miles

Making the total number of miles of road operated as stated above, 444, with an equipment consisting of 50 locomotives and 1,050 cars.

A full description of the line surveyed between San Diego, Cal., and Marshall, Texas, has been filed in the department of the interior.

On the 14th of September, 1876, Mr. W. L. B. Jenney, of Chicago, was appointed by the President of the United States as commissioner for the examination of the Texas & Pacific Railway, recently completed, and under instructions from the honorable secretary of the interior made careful inspection of the road between Dallas and Fort Worth and Brookston and Texarkana Junction—in all 126 miles—reporting favorably on same to the department of the interior, under date of February 26, 1877.

In accordance with the recommendation of the report, the road inspected by Mr. Jenney was *formerly* accepted by the President of the United States on the 8th of March, 1877.

There is filed with this report a copy of the 6th annual report of the board of directors of the Texas & Pacific Ry. Co. to the stockholders, covering in detail the operations of the company for the fiscal year ending May 31, 1877.

Income Account Texas & Pacific Ry. Co. for the Year Ending June 30, 1877.

Credits:

By receipts from:	
Freight	1,468,694.63
Passengers	531,385.27
Express	20,323.37
Mail	31,035.
Telegraph	14,494.32
Miscellaneous	4,706.

Transportation Receipts for the Year Ending June 30, '77		$2,070,638.59
Debits:		
To payments for:		
Conducting Transn.	442,170	
Motive power	310,476.44	
Maintenance of way	444,105.96	
Maintenance of cars	135,484.79	
General expenses	49,749.37	
Working expenses for the year ending June 30, '77		$1,381,986.56
By net earnings to credit of income June 30, '77 ...		$ 688,652.03
Add: Receipts from other sources		1,498,379.38
Cash and supplies on hand June 30, '76		949,565.66
Balance—(Accts. payable) .		57,917.19
Total.....		$3,194,514.26
Against which there is charged for		
Legal expenses	5,111.84	
General expenses	45,922.66	
Insurance and Taxes	65,411.69	
Premium on gold	37,424.20	
Interest	558,742.42	
Construction	2,221,677.24	
Land Dept.	47,947.96	
Reduction of floating debt...	212,276.25	
Total		$3,194,514.26

Indebtedness of the Texas Pacific Railway Co., June 30, 1877:	
First mtge. 6% gold construction bonds limited to $8,000 per mile of road, dated May 15, 1875, payable March 1, 1905	3,130,000
Consolidated mtge. 6% gold construction bonds, dated June 1, 1875; payable June 1, 1905, $17,000 per mile	7,448,000
Income and land grant 7% currency bonds, dated March 15, 1875; payable June 1, 1905, limited to an issue of $8,908,000	5,534,000
First mtge. 6% gold construction bonds, $40,000 per mile—old issue	189,00
(These bonds are outstanding as collateral on obligations not yet matured. On payment of the obligations the bonds will be canceled.)	
Land grant bonds—old issue.....	1,561,000
(These bonds are in process of withdrawal by exchange for the new income and land grant bonds; $1,227,000 of the above are under agreement to be exchanged.)	
Unpaid coupons—land grant bonds.....	245,805
(All but 14% of this amount is under agreement to be funded in new land bonds at par.)	
Fractional bond scrip redeemable in bonds of the company on presentation	78,811.30

School fund loan State of Texas	192,970.20
Bills payable	285,044.68
Current accounts	600,053.81
Total,	$19,264,684.99

Equipment.

Locomotives:	
In running order	47
Used as stationary engines	2
Not in use—broad-gauge	1
Total locomotives,	50
Cars:	
Passenger, 1st class	14
Passenger, 2d class	14
Passenger, baggage combination	3
Passenger, directors	1
Box	494
Baggage, mail, and express.....	11
Stock	171
Caboose	28
Flat	305
Boarding	7
Wrecking	1
Pile driving	1
Total cars	1050

Names and residences of officers and directors of the Texas & Pacific Railway Company.

Officers.

President,	Thos. A. Scott,	Phila., Pa.
Vice-president,	Frank S. Bond,	Phila., Pa.
Vice-president,	John C. Brown,	Pulaski, Tenn.
Treasurer,	G. D. Krumbhaar,	Phila., Pa.
Asst. to Prest.,	Jas. P. Scott,	Phila., Pa.
Secretary.	Chas. E. Satterlee,	Phila., Pa.
Genl. Supt.,	Geo. Noble,	Marshall, Texas.
Auditor,	Thos. D. Maurer,	Marshall, Texas.
Land Comr.,	Wm. H. Abrams,	Marshall, Texas.

Directors.

Thos. A. Scott,	Phila., Pa.
Frank S. Bond,	Phila., Pa.
John C. Brown,	Pulaski, Tenn.
M. Baird,	Phila., Pa.
H. H. Houston,	Phila., Pa.
R. D. Barclay,	Phila., Pa.
M. O. Roberts,	New York City.
H. G. Stebbins,	New York City.
H. G. Marguand,	New York City.
W. T. Walters,	Baltimore, Md.
Alfred Gaither,	Cincinnati, Ohio.
W. C. Hall,	Louisville, Ky.
W. S. McManus,	Chester, Pa.
T. D. Nesmith,	San Diego, Cal.
W. H. Harrison,	Jefferson, Texas.

Names and residences of the stockholders of the Texas & Pacific Railway Company, July 1, 1877.

Thos. A. Scott,	Phila., Pa.
Mathew Baird,	Phila., Pa.
H. W. Gray,	New York City.
M. O. Roberts,	New York City.
H. G. Stebbins,	New York City.
W. T. Walters,	Baltimore, Md.
Cal. & Texas Railway Construction Co.,	Phila., Pa.
J. S. Harris,	Unknown.
W. C. Hall,	Louisville, Ky.
W. S. McManus,	Chester, Pa.
M. Baird, W. T. Walters, F. S. Bond. Alfred Gaither, John McManus,	Trustees.
H. H. Houston,	Phila., Pa.
R. D. Barclay,	Phila., Pa.
Frank S. Bond,	Phila., Pa.
H. G. Marguand,	New York City.
Alfred Gaither,	Cincinnati, Ohio.
T. D. Nesmith,	San Diego, Cal.
W. M. Harrison,	Jefferson, Texas.
Frank S. Bond, in trust,	Phila., Pa.
John C. Brown,	Pulaski, Tenn.

State of Pennsylvania,
City and County of Philadelphia. } ss.

Be it remembered that on this first day of October, A. D. 1877, before me, the subscriber, a notary public of the State of Pennsylvania, in and for the city and county of Philadelphia, duly qualified, personally came Thomas A. Scott, president of the Texas & Pacific Railway Company, personally known to me, who being duly sworn, deposeth and saith that he is president of said corporation; that he has read the foregoing report of the business of the Texas & Pacific Ry. Company for the year ending, June 30, 1877, and that the statements therein made are true to the best of his knowledge and belief.

THOMAS A. SCOTT,
Pres. Texas & Pacific Railway Co.

Sworn and subscribed before me at Philadelphia aforesaid, the day and year above written.

[Seal] JOHN E. SIMS, Jr.
Notary Public.

[Endorsed]: Texas & Pacific R. W. Department of the Interior. Lands and Railroads. Received 2d Oct., 1877. Dated 1 Oct., 1877. From Thos. A. Scott, Pres. Texas & Pac. R. W. Co., Philadelphia, Penn. Subject: Transmits annual report of Texas & Pacific R. W. Co. for the year ending 30th June, 1877. Action: , 187 . Respectfully referred to the commissioner of the general land-office. Ackd. 2d Oct., 1877. Registered 2-841. Chief Clerk. (587.)

(587.) Ex. 26. L. L. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 26. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 27.

"L." (4-207.) H. K.

Department of the Interior.

General Landoffice,

Washington, D. C., November 26th, 1895.

I, E. F. Best, acting commissioner of the general landoffice, do hereby certify that the annexed tracing of a portion of a map that accompanied the report of the Texas & Pacific Railroad Co., for the year ending June 30, 1877, is a true and literal exemplification of so much of the original on file in this office as is shown thereon.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] E. F. BEST,

Acting Commissioner of the General Landoffice.

[Endorsed]: (587.) Ex. 27. L. L. T. & Pac. R. Gen. route mp. Rep. 77. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 27. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

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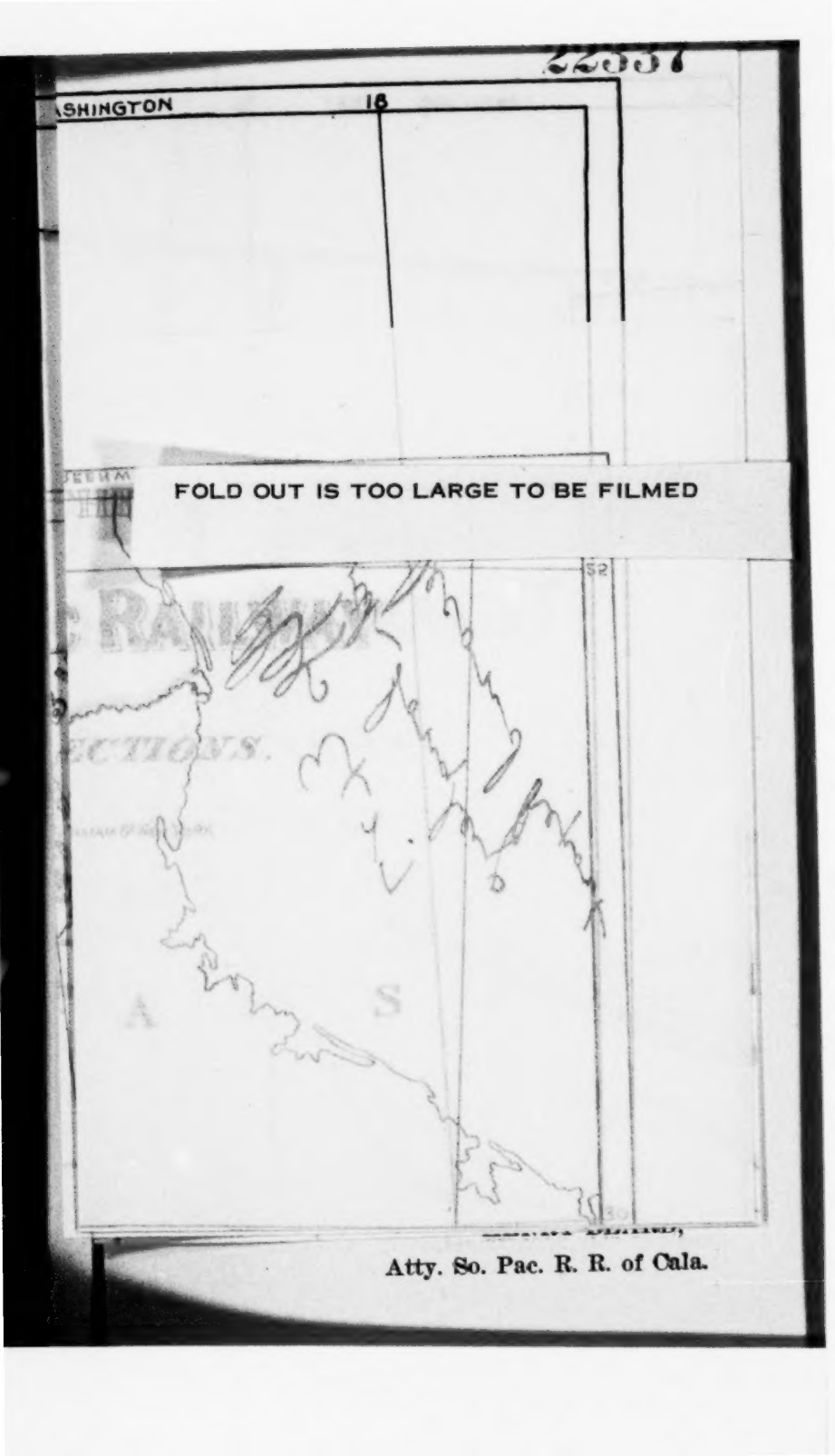
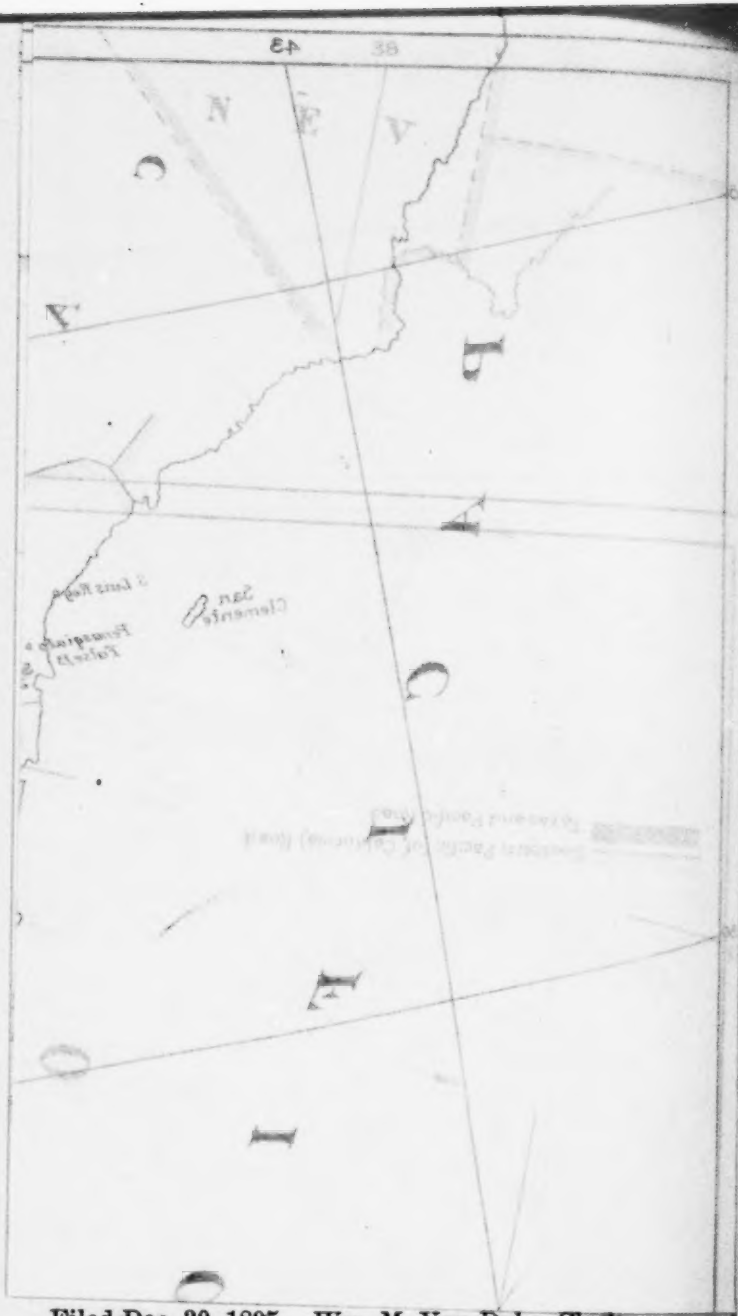


Atty. So. Pac. R. R. of Cala.



Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit "A1."

J. I. P. (Vignette.) A. M.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Nov. 26th, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original and of its endorsement on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal] WM. H. SIMS,

Acting Secretary of the Interior.

E. W.

Henry Beard, Attorney at Law, 927 F St., N. W.

Washington, D. C., Feby. 24, 1887.

Hon. L. Q. C. Lamar, Secretary of the Interior.

Sir: Having recently learned that a copy of the resolution of the board of directors of the Southern Pacific Railroad Company of California, accepting the grant by act of Congress of March 3, 1871, cannot now be found in the files of the department, I have been instructed by the general solicitor of the company to enclose the within copy of said resolution of acceptance adopted by said board on the 16th of May, 1871.

Very respectfully,

HENRY BEARD,

Atty. So. Pac. R. R. of Cala.

[Endorsement]: 1858. Department of the Interior. L. & R. R. Div. Received Feb. 25, 1887. Beard, Henry, City, Feb. 24, '87. Encloses copy of res. of board of directors of S. P. R. R. Co. of Cal. accepting provisions of act of Mch. 3, '71. Ackd. Feb. 25, '97. 1 Enc.

[Endorsed]: A1. L. L. ("A.") U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit No. A1. Leo Longley, Special Examiner. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. A1. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit "A2."

A. M.

(Vignette) P. M. S.

W. W. B.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., August 21, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of a certified copy of a resolution of the Southern Pacific Railroad Company, accepting the terms, conditions, and impositions of the act of Congress, approved March 3, 1871, on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal] WM. H. SIMS,
Acting Secretary of the Interior.

E. W.

Resolution of the Southern Pacific Railroad Company accepting the terms, conditions, and impositions of an act of Congress of the United States, incorporating the Texas Pacific Railroad Company.

"Resolved, that this company will and does hereby accept the terms, conditions, and impositions of the act of Congress of the United States, entitled 'An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes,' approved March 3d, 1871, and that a copy of this resolution of acceptance, certified under the seal of this company, be forwarded to and filed with the secretary of the interior."

I, J. L. Willcutt, secretary of the Southern Pacific Railroad Company, hereby certify the foregoing to be a full, true, and correct copy of a resolution adopted by the board of directors of said company at a meeting of said board held on the 16th day of May, A. D. 1871.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said company at the city of San Francisco, Cal., this 5th day of February, A. D. 1887.

[Seal] J. L. WILLCUTT,
Secretary Southern Pacific Railroad Co.

State of California,
City and County of San Francisco. } ss.

Personally appeared before me J. L. Willcutt, personally known to me to be the person who signed the within certificate, and who acknowledged that the signature of J. L. Willcutt, secretary, attached to the foregoing resolution and certificate thereof, was his genuine signature, and that he duly executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 10th day of February, 1887.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, California.

[Endorsed:] A2. L. L. "(b)" 1858. Department of the Interior. L. & R. R. Received Feb. 25, 1887.

U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 587. Defendants' Exhibit No. A2. Leo Longley, Special Examiner. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Defendants' Exhibit No. A2. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GERRITT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY,
Defendants.

No. 587.

Third Partial Report of Special Examiner.

To the Honorable, the Judges of the Circuit Court of the United States in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause as of the 23d day of January, 1895, whereby it is ordered that the undersigned, as special examiner in chancery, shall take the evidence in the above-entitled cause and report the same to the Court, the said special examiner does now submit this his third partial report, as follows:

That on the 28th day of January, 1896, at 10 o'clock A. M., the complainant appeared at the office of Walter J. Trask, Esquire, in the city of Los Angeles, California, by its solicitor, Joseph H. Call, Esquire, and the defendants by their counsel, Walter J. Trask, Esquire; and thereupon the complainant introduced in evidence exhibts numbered Plaintiff's Exhibits 28 and 29. And

thereupon the further hearing was adjourned to be resumed upon further notice.

And the said record, accompanying this report, contains all the evidence and exhibits introduced in said cause by the respective parties between the date of my second partial report herein and the date hereof; all of which, with the exhibits introduced, is herewith returned to the Court.

January 28, 1896.

LEO LONGLEY,
Special Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiffs,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GERRITT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY,
Defendants.
No. 587.

Testimony.

Testimony on behalf of plaintiffs, taken by consent, before Leo Longley, special examiner and stenographer, at

the office of Walter J. Trask, Esq., in the city of Los Angeles, California, this 28th day of January, 1896, at ten o'clock A. M.

Present:

Joseph H. Call, Esq., Special Examiner United States Attorney, for Plaintiff.

Walter J. Trask, Esq., of Counsel for Defendants.

Mr CALL.—I offer in evidence a certified copy of the annual report of the Texas & Pacific Railway Company for the year ending June 30, 1874, on file in the department of the interior and general landoffice, and request that the same be marked "Plaintiffs' Exhibit No. 28."

Mr. TRASK.—To which the defendants object, on the ground that the same is incompetent, irrelevant, and immaterial.

Mr CALL.—I offer in evidence a certified copy of the map filed by the Texas & Pacific Railway Company in the department of the interior and general landoffice, which accompanied the annual report of said company to the secretary of the interior for the year ending June 30, 1876, and request that it be marked "Plaintiffs' Exhibit No. 29."

Mr. TRASK.—To which the defendants object, on the ground that the same is incompetent, irrelevant, and immaterial.

Hearing adjourned to be resumed upon further notice.

[Endorsed]: 587. U. S. Circuit Court, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Third partial report of Special Examiner. Filed Jan. 28, 1896. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 28.

A. M.
E. H. H.
(Vignette) M. C. McN.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., Jan. 3, 1896.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed the day and year first above written.

[Seal] HOKE SMITH,
Secretary of the Interior.

ANNUAL REPORT

of the

TEXAS & PACIFIC RAILWAY COMPANY

For the Year Ending

June 30, 1874.

[Stamped in red ink:] Department of the Interior. Nov. 10, 1874.

Texas Pacific Railway Company,
Office of the President,
Philadelphia, November 7, 1874.

Hon. C. Delano, Secretary of the Interior, Washington, D. C.

Sir: In compliance with the law governing railroad corporations chartered by the general government, I have the honor to submit herewith a report exhibiting the financial condition of the Texas and Pacific Railway Company on the 1st day of July, 1874, together with the operations of the road for the year ending on that date.

Very respectfully,
THOMAS A. SCOTT,
Pres.

Annual Report Texas & Pacific Railway Company, July 1st, 1874.

The Texas & Pacific Railway Company, chartered by act of Congress, March 3, 1871.

Capital stock authorized.....		$50,000,000.00
Capital stock issued:		
Scrip stock for partial payments on account of subscriptions...	600,000	
Full paid stock	1,000,000	$1,600,000.00

Miles of railroad in operation	320
Miles of road completed since date of last report	146.9-100
Miles of road graded, bridged, and tied ready for the iron	107

Amount of money received and expended by the Texas & Pacific Railway Company from July 1, 1873 to June 30, 1894:

Receipts:

From transportation of passenger and freight	847,423.77
From assessment on stock	395,800.00
From interest and exchange	943.64
From cash on hand July 1, 1873	2,287.54
	$1,246,454.95

Expenditures:

For expenses operating road	296,676.20
For accounts payable July 1, 1873	23,610.43
For construction account	276,329.73
For land department	69,605.80
For interest and exchange	17,626.54
For general expenses	105,109.47
For coupon interest	360,313.78
For cash on hand	97,183.00
	$1,246,454.95

Statement of the earnings of the Texas & Pacific Railway and the expenses of operating the same from July 1, 1873, to June 30, 1874.

Receipts:

From passengers	269,488.86
From freights	572,453.13
From express	6,906.00
From U. S. Mails	14,318.63
From telegraph	420.17
From miscellaneous	8,394.83
	$871,981.62

Expenses:

For conducting transportation	184,973.22
For motive power	172,133.51
For maintenance of way	239,794.07
For maintenance of cars	54,357.06
For general expenses	39,474.56
	$690,732.42
Current construction, improving road, widening gauge, ditching, grading, etc.	$336,319.58

Indebtedness of the Texas & Pacific Railway Company and the various kinds thereof on the first day of July, 1874:

Capital stock, script 30 per cent on $2,000,000	600,000.00
Capital stock, full paid	1,000,000.00

Bonded Debt.—The bonds of the company consist of two kinds, viz, first mortgage 6 per cent gold.

Construction bonds, dated June 1, 1872, mature June 1, 1912; principal and interest payable in New York or London, at option of holder. Denomination, $1,000; authorized issue, forty thousand dollars per mile of constructed and equipped road.

First mortgage land grant, 7 per cent Currency Bonds, dated July 1, 1872; mature July 1, 1912; principal and interest payable in New York. Denomination, $1,000.

Authorized issue 20,000,000.

Construction bonds, issued	9,210,000.00
Land grant bonds, issued	9,251,000.00
Floating debt	2,207,444.45
Debt of the Southern Pacific R. R. Co. to the State of Texas by the Texas & Pacific Ry. Co.	204,964.69
Total,	$22,473,409.14

Assets:

320 miles of constructed and equipped road; 107 miles of partly equipped road; 350 miles of telegraph line	20,708,986.63
Accounts collectible	73,481.77
Supplies on hand	138,990.78
Cash on hand	97,183.00
	21,018,642.18
To balance, profit and loss account	1,454,766.96
Total.	$22,473,409.14

Names and residences of officers and stockholders:

Officers.

President,	Thomas A. Scott,	Philadelphia.
Vice-president,	Wm. A. Wallace,	Clearfield, Pa.
Treasurer,	_____,	_____.
Secretary,	Emanuel B. Hart,	New York City.

Directors.

Thos. A. Scott,	Philadelphia.
William A. Wallace,	Clearfield, Pa.
J. W. Throckmorton,	McKinney, Texas.
A. J. Cassatt,	Philadelphia.
Albert Hewson,	Philadelphia.
Joseph Lesley,	Philadelphia.
H. C. Spackman,	Philadelphia.
Wm. S. McManus,	Reading, Pa.

Stockholders.

Thos. A. Scott,	Philadelphia.
Wm. A. Wallace,	Clearfield, Pa.
J. W. Throckmorton,	McKinney, Texas.
A. J. Cassatt,	Philadelphia.
Albert Hewson,	Philadelphia.
Joseph Lesley,	Philadelphia.
H. C. Spackman,	Philadelphia.
Wm. S. McManus,	Reading, Pa.
H. W. Gray,	New York City.
Edwards Pierrepont,	New York City.
W. T. Walters,	Baltimore, Md.
J. S. Harris,	Howard, Ill.
J. Edgart Thompson, Trustee,	Philadelphia.
Cal. & Texas Railway Construction Co.,	Philadelphia.

Description of the Lines of Road Surveyed and Fixed upon for Construction.

Adopted Line.

The Texas & Pacific Railway will extend from Shreveport, Louisiana, on Red River, to San Diego, California; with a branch from Marshall, Texas, to Texarkana, there connecting with the Cairo and Fulton Railway, and from Texarkana through Paris and Sherman, connecting with the main line at Fort Worth.

Over this route the surveys have determined that, in an engineering and commercial point of view, the line to be adopted is as follows:

Leaving Shreveport the road runs almost due west through Caddo Parish, Louisiana, and through the counties of Harrison, Gregg, Upshur, Wood, Smith, Van Zandt, Kaufman, Dallas and Tarrant, in Texas, passing through the towns of Marshall, Hallville, Longview, Willow Springs, Gladewater, Hawkins, Mineola, Grand Sabine, Wills Point, Elmo, Terrell, Forney, Mesquitte and Dallas to Fort Worth, at the junction of the west and Clear forks of Trinity river, in Tarrant county.

This line crosses the divide between Red river and Sabine river, and runs up the valley of the Sabine, crossing it in Van Zandt county, crossing the Trinity river at Dallas, following the west fork of the Trinity to Fort Worth; distance, 219 miles.

Fort Worth to San Diego.—Commencing at Fort Worth, the line follows the valley of the Clear Fork of Trinity to the mouth of South Fork, and up the valley of

South Fork to its head, passing through Weatherford, the county seat of Parker county, thence northerly crossing the head waters of numerous tributaries of the Brazos into Palo Pinto county. It then turns and crosses the Brazos river, near the mouth of Cedar creek, and follows up the valley of Veals creek, and crosses the divide into the valley of the Clear fork of the Brazos, and thence to the extremity of the big bend of the Clear fork, about 4 miles from Fort Griffin; thence following the valley of Trout creek and down one of the tributaries of Clear fork to a point near the line of Shackleford county; thence crossing California creek on the west line of the same county and following it to its head, and thence in a line on the divide between the waters of Clear and Double Mountain forks of the Brazos to a point south of the Double mountains.

From this point the line runs westerly, crossing the head waters of the north fork of the Colorado, and between Muchaqui, and Solitaire mountains, to Sulphur Springs, on the east border of the Staked Plains, a distance of 75 miles; thence southwest crossing the Staked Plains to the Pio Pecos, crossing this river above the mouth of Toyah creek, and below the mouth of the Delaware creek, one hundred and nineteen miles; thence in a direct line to the newly-discovered pass in the Guadaloupe mountains (known as Hurd's Pass). This pass is about 40 miles southeast of the Guadaloupe Pass; thence parallel to the Guadaloupe range to a point in Salt Lake Valley 25 miles southwest of Guadaloupe pass; thence west, crossing the Henca mountains through a low pass to Fort Bliss, on the Rio Grande.

From there the line follows the valley of the Rio Grande for a distance of 33 miles to near the town of Mesilla, then turning, ascends to the table-lands of the Sierra Madre, which is reached in a distance of six miles, and on the same course crossing the high rolling prairie of the Sierra Madre, it passes through the Florida Pass, between Fort Cummings and the Florida mountains, into the valley of the Mimbres, crossing that river south of Ojo de Vacca (Cow Springs), and south of Fort Bayard, Silver City, and the Lone Mountain mining district. We leave the Burro mountains on the north, the Pyramid range on the south, and passing near the Rallston Silver mines, we reach the valley of Playas one hundred and twenty-five miles west from the Rio Grande; after crossing this valley we pass the Pelincello on Stein's Peak range, through a low gap, south of Stein's Peak, and the old Boundary Commission road. The line then crosses the San Simon Valley to Railroad Pass, in the Chioccahin mountains; thence across the valley of the Playas de los Pinos, and across the Caletro mountains by way of Nugent's Pass, which is north of and about ten miles from Dragoon Pass; thence to the valley of the San Pedro, near the settlement of Tres Alamos; thence up the valley of the San Pedro, and thence to the Cunego Pass, between the Whetstone mountains and the Catacoma mountains, 20 miles north of Fort Buchanan summit, which is the highest point between the San Pedro and the Gila; thence down the valley of the Cuneja and Rilatto to near the town of Tucson; thence via the point of the mountains to near Desert Station; thence leaving

the valley and passing north of the Picacho mountains to near Picacho Station, from thence to the Gila, near Sacation, and about 60 miles below the mouth of the San Pedro, and down the valley of the Gila to the Pinos villages; thence to the junction of the Gila with the Colorado of the West at Fort Yuma, through St. Valentine Pass. From there the line passes to the north of sand-hills, and across the Salt Lake district of the Colorado desert of California, over which our line for 45 miles is below sea level, the lowest point being 290 feet below tide water. In crossing this the line passes on the north margin of the Salt Lake of the Colorado desert, leaving the Mud Volcanoes about five miles to the south and the Dos Palmos Station about the same distance to the north, we reach the Cabazon valley, 113 miles from Fort Yuma; thence fifty miles to the summit of San Gorgonio Pass. This pass is 2,621 feet above tide water, and its small elevation must be considered remarkable, as it lies between the San Bernardino and San Jacinto mountains, the highest peaks of the range. Leaving San Gorgonio Pass our course is southwest to the head of Temecula canyon, down the canyon to the open valley, striking the coast about 40 miles north of San Diego; thence down the coast to the shore of San Diego bay, and along the shore of the bay to the depot grounds of the Texas & Pacific Railway—

Distance from the Pinos on the Gila river.. 444.4 miles
Fort Worth to San Diego.....1457.64 miles
Shreveport to San Diego.....1476.64 miles
Texarkana to San Diego.....1693.63 miles

In addition to the main line from Shreveport to San Diego, the Texas & Pacific Railway have the Jefferson Division, which leaves the main line at Marshall, and runs north through the counties of Harrison and Marion to Jefferson, and thence east of north through the counties of Cass and Bowie to the Transcontinental Division, at a point five miles west of Texarkana, passing through the towns of Woodlawn, Jefferson, Kildare, Atlanta, Lanark, and Moorse Landing. Length of Jefferson Division proper, 69 miles; distance from Marshall to Texarkana, 74 miles.

Transcontinental Division.—From Texarkana on the line between Arkansas and Texas, the line runs nearly due west through the counties of Bowie, Red river, Lamar, Fannin, and Grayson, to a point a few miles west of Sherman; thence a little south of west through the west part of Grayson, the southeast corner of Cooke, and through Denton and Tarrant counties, to Fort Worth, passing through the towns of Round Prairie, Bowie, De Kalb, Savannah, Clarksville, Blossom, Prairie, Paris, Brookston, Honey Grove, Dodd City, Bonham, Savoy, Shannon, Pilot Point and Denton. From Texarkana to Grove it follows the divide between Red river and Sulphur, then on the slope towards Red river to five miles west of Sherman; thence on the divide between the East Fork of Trinity and Trinity river, crossing Elm fork of Trinity river and Denton and Hickory creeks, tributaries of the Trinity, to Fort Worth; distance, 236 miles.

For the Texas & Pacific Railway Company:

THOMAS A. SCOTT,
President.

City of Philadelphia,
State of Pennsylvania.

Be it remembered that on this seventh day of November, A. D. 1874, before me, the subscriber, a notary public for the city of Philadelphia, personally appeared Thomas A. Scott, President of the Texas and Pacific Railway Company, who, being duly sworn, deposes and says that he is the president of said company, and that the facts set forth in the foregoing report are just and true to the best of his knowledge and belief.

THOMAS A. SCOTT,
Pres.

Sworn to and subscribed before me the day and year aforesaid.

Witness my hand and seal.

[Notarial Seal] HENRY C. SPACKMAN,
Notary Public.

[Endorsed]: Annual report to interior department T. & Pac. R. R. Co. for 1874. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. So. Pac. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 28. Leo Longley, Special Examiner. Filed Jan. 28, 1896. Wm. M. Van Dyke, Clerk.

Plaintiffs' Exhibit No. 29.

(4-207.) R. H. M.

Department of the Interior.

General Landoffice,

Washington, D. C., January 8, 1896.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed tracing is a copy of so much of a map of the Texas and Pacific Railway and its connections, filed with and accompanying the annual report of the Texas Pacific Railway Company, to the secretary of the interior for year ending June 30, 1876, as it purports to represent, and is a true and literal exemplification thereof.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Landoffice.

[Endorsed]: U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. So. Pac. R. R. Co. et al. No. 587. Plaintiffs' Exhibit No. 29. Leo Longley, Special Examiner. Filed Jan. 28, 1896. Wm. M. Van Dyke, Clerk.

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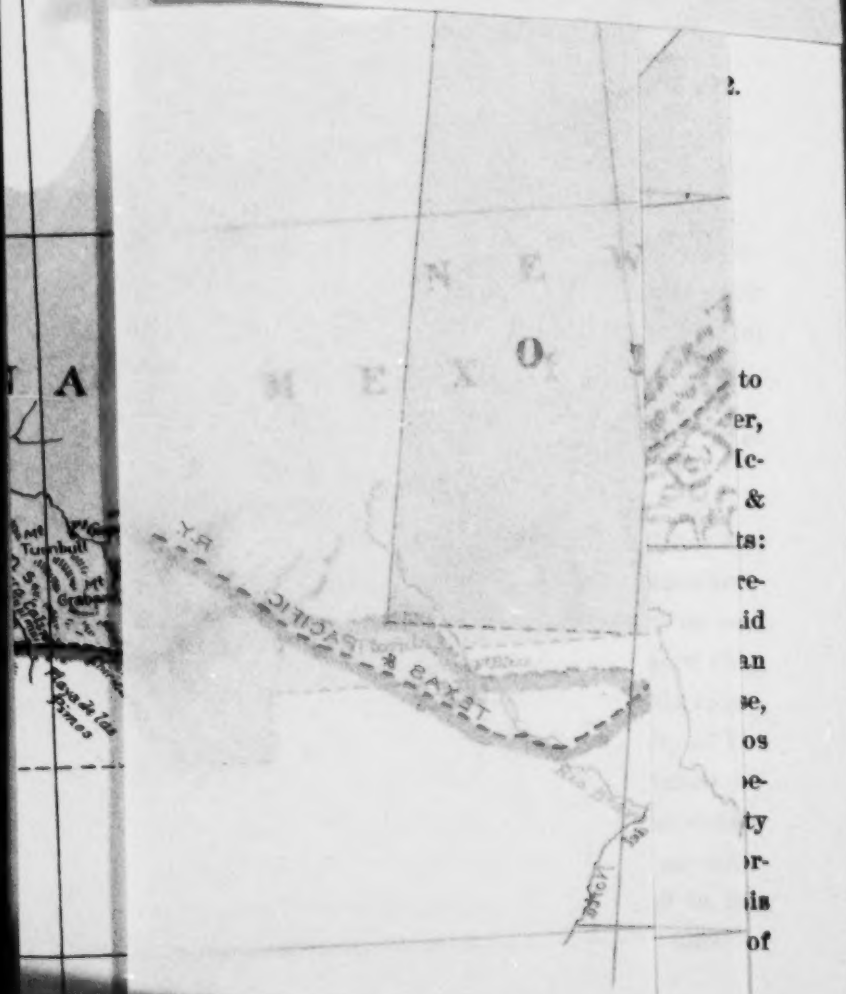

In the United States Circuit Court, for the Southern District of California, Ninth Circuit.

THE UNITED STATES,
Plaintiffs,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, and THE COLORADO RIVER IRRIGATION COMPANY,
Defendants.

Consolidated Nos. 587, 675, 662.

Notice to Take Depositions.

To the defendants in the above-entitled cause and to Water J. Trask, Lewis E. Payson, William Singer, Jr., William F. Herrin, W. H. H. Hart, Page, McCutchen & Eells, and Butler, Notman, Joline & Mynderse, attorneys and counsel for said defendants:

You will please take notice that the complainants herein will take the testimony of Joseph Crawford in said cause, each and all of whom reside and live more than one hundred miles from the place of trial of this cause, to wit, more than one hundred miles from the city of Los Angeles, California. Said testimony will be taken before Leo Longley, a notary public in and for the county of Los Angeles, State of California, who is not an attorney or of counsel for either party, or interested in this cause. Said testimony will be taken at the office of

Joseph H. Call, No. 212 Third street, in the city of Los Angeles, California, on the 8th day of October, A. D. 1896, at the hour of 10 o'clock A. M., and the taking thereof will be continued from day to day, and may be adjourned from place to place as may be determined by said notary.

JOSEPH H. CALL,

Special Assistant United States Attorney and of Counsel for Complainants.

Received a copy hereof Sept. 29, 1896.

WALTER J. TRASK,

Attorney for Defendants.

[Endorsed]: Consolidated Nos. 587, 675, 662. In the United States Circuit Court, So. Dist. of Cal. United States vs. Southern Pacific Railroad Co. et al. Notice to take depositions. Joseph H. Call, Spl. U. S. Atty.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES, Complainants, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY and Others, Defendants.	Consolidated Nos. 587, 662, 675

Deposition of Joseph Crawford.

Taken on behalf of the complainant at the office of Joseph H. Call, Esq., No. 212 Third Street, in the city of

Los Angeles, California, on the 8th day of October, A. D. 1896, pursuant to the annexed notice and an original duplicate of said notice on file in the office of the clerk of the United States Circuit Court, Ninth Circuit, Southern District of California.

On the day aforesaid, being October 8th, A. D. 1896, at the office of said Joseph H. Call, Esq., at the hour of 10 o'clock in the forenoon, there was present Joseph H. Call, Esq., special assistant United States attorney, Joseph Crawford, and Franklin Jordan, Esq., attorney for said Joseph Crawford, and no others, and no appearance having been made by the defendants, or either of them, an adjournment of said hearing was had until the hour of 12:30 P. M. of the same day, the said 8th day of October, A. D. 1896; and said hour of 12:30 P. M. of said day having arrived, there was present at the place above mentioned said Joseph H. Call, Esq., special assistant United States attorney, Joseph Crawford, Franklin Jordan, Esq., attorney for said Crawford, and the undersigned, H. S. Rollins, a notary public in and for the county of Los Angeles, State of California, and no others, and no appearance was made by the defendants, or either of them, and thereupon the following proceedings were had:

JOSEPH CRAWFORD, being first duly and regularly sworn and cautioned, was examined, and in answer to the following interrogatories, testified as follows:

Examination by JOSEPH H. CALL, Esq., special assistant United States attorney.

Q. What is your name? A. Joseph Crawford.

Q. Where do you live?

A. At San Jacinto.

Q. What county? A. Riverside county.

Q. This State? A. State of California.

Q. How far do you live from the city of Los Angeles?

A. About one hundred and twenty miles.

Q. By the nearest direct and traveled road?

A. Yes, sir. You have to go across trails to get there.

Q. And if you went by the better roads it would be further than that?

A. Yes, sir; it would be one hundred and forty miles.

Q. Where were you born?

A. Utica, New York.

Q. State of New York? A. Yes, sir.

Q. Then you are a citizen of the United States?

A. Yes, sir.

Q. Did you ever serve in the United States army?

A. Yes, sir; three years and four months.

Q. In what year did you enlist?

A. Sixty-one—September.

Q. You were not discharged then until '65?

A. Sixty-four.

Q. In '64? A. Yes, sir.

Q. And you served regularly in the army for three years and four months?

A. Well, I wasn't in the front; I stayed four months in the State.

Q. What was the term of your enlistment?

A. I enlisted for three years, or during the war.

Q. And served for three years and four months?

A. Yes, sir.

Q. State whether you are acquainted with the northwest quarter of section 17, township 7 south, range 3 east, San Bernardino base and meridian.

A. Yes, sir; I built the cabin on that place.

Q. Just answer the question and I will come to that.

A. Yes, sir.

Q. How long have you known that land?

A. I have known it since '87, I think.

Q. Do you live there on that land? A. Yes, sir.

Q. Now, state when you went on that land to live, and under what circumstances.

A. I went onto it to live just as soon as I could erect the cabin after I filed on it.

Q. You filed on it? A. Yes, sir.

Q. When did you file on it?

A. I think it was in '87; in—I do not know whether it was July or August.

Q. Eighteen eighty-seven?

A. I think so. It might have been a little later than that.

Q. That land at that time was public land of the United States?

A. It was thrown upon the market by Bethune.

Q. As government land? A. Yes, sir.

Q. Did you go onto that land and did you apply to enter it before or after it was restored under the order of the secretary of the interior?

A. Before, I think.

Q. What date did you settle upon this land?

A. I think it was in July.

Q. What year? A. '87; 1887.

Q. And how long did you reside upon it?

A. I stayed on it two years and over; I cannot just say how much over.

Q. Continuously? A. Continuously.

Q. Did you improve the land?

A. I grubbed over one hundred acres on it.

Q. So that you had one hundred acres suitable for cultivation? A. Yes, sir.

Q. What buildings or other improvements did you erect on the land?

A. A cabin twelve feet square.

Q. And did you live in that during that time?

A. Yes, sir.

Q. Under what claim of right did you live on this land? A. Homestead.

Q. You claimed it as a homestead? A. Yes, sir.

Q. Do you know when the land was surveyed?

A. No, sir; I don't remember. I think Minto surveyed it.

Q. And when did you make your application at the United States landoffice at Los Angeles to enter this land as a homestead—the first application you ever made?

A. It was in '87.

Q. And it was within how many days after you moved on the land?

A. Well, it was—I don't know—it was pretty quick after I moved on the land.

Q. It was within thirty days? A. Yes, sir.

Q. Did you offer to pay the landoffice fees?

A. I paid the landoffice fees.

Q. You paid them at that time? A. Yes, sir.

Q. They didn't issue any receipt to you?

A. Yes, sir; but when I took the money back they tore the name off the receipt.

Q. Under what circumstances, and what did the officers at the landoffice say to you that induced you to take your money back? A. Mr. Bethune there—

Q. Register of the United States landoffice?

A. Yes, sir; and he said he didn't know the railroad company had selected this land when he advised that it was subject for homesteads, or something to that effect.

Q. And so he asked you to give up your receipt and take your money back?

A. Yes, sir; and by so doing I wouldn't lose my homestead right.

Q. Have you got that receipt with the name torn off?

A. I think I have.

Q. Produce it if you have it here.

A. I haven't got it here.

Q. What was the receipt? In regular form, signed by the receiver of the landoffice at Los Angeles, was it?

A. Yes, sir.

Q. And did he then tell you that that land was railroad land? A. No, sir—no sir; there was no—

Q. But he told you that you wouldn't lose your homestead right to that land if you returned the receipt and took your money?

A. Yes, sir; but this was over three months after. I had this receipt in my possession over three months before I knew the railroad had selected it.

Q. You mean before they applied to select it?

A. Before I was notified to come back to the landoffice and get my money.

Q. When did you next apply to enter this land as a homestead? A. In 1890—October 14th.

Q. Did you ever enter any other land as a homestead under the laws of the United States than this tract?

A. No, sir.

Q. The time that you actually lived upon this land, added to the time that you actually served in the army of the United States made more than five years?

A. Yes, sir.

Q. Well, when you applied to enter this land the second time, did you pay, or offer to pay, the fees?

A. I offered to pay the fees, but they wouldn't take them. In gold coin.

Q. The full amount of the fees that they were entitled to receive? A. Yes, sir.

Q. Do you remember now how much it was?

A. I tendered them a twenty dollar gold piece.

Q. And they refused it?

A. They refused it.

Q. What ground did they assign for their refusal?

A. They couldn't take it, is what they told me.

Q. Did they say anything about the Southern Pacific Railroad Company having claimed this land when you applied to enter it a second time?

A. I am not certain whether they did or not. Mr. Jordan was with me when I tendered it. He went with me as a witness.

Q. But anyway they refused to receive your money?

A. Yes, sir.

Q. Or issue the receipt? A. Yes, sir.

Q. What did you do then?

A. I put it in Mr. Jordan's hands and left it.

Q. Mr. Jordan—you mean Franklin Jordan, the lawyer? A. Yes, sir.

Q. To represent you in a contest?

A. In a contest. I was instructed to do so by Mr. Brunson—Judge Brunson.

Q. Then what did Mr. Jordan do for you?

A. Well, he kept it in court. I don't know. He informed me after a while to bring two witnesses and enter up proof of my residence.

Q. Upon the land? A. Yes, sir.

Q. And you did that? A. Yes, sir.

Q. At the Los Angeles landoffice? A. Yes, sir.

Q. To show that you had fully complied with the homestead law? A. Yes, sir.

Q. And were entitled to a patent?

A. I think so.

Q. What is your age? A. Sixty-four years.

Q. Are you a single man? A. Yes, sir.

Q. Always have been? A. Yes, sir.

Q. Do you claim any other home or residence than the land in controversy? A. No, sir.

Q. What is your occupation? A. Laborer.

Q. What is the value of the improvements and labor that you have put upon this place?

A. Between $250.00 and $300.00.

Q. Is the house that you built upon the land a good, comfortable structure at all seasons of the year?

A. Yes, sir; for me it is. It is boards standing on end, and battened.

Q. In case you secure title to this land, do you intend to occupy it as your home in good faith?

A. Yes, sir; certainly.

Q. What regiment did you serve in?

A. 12th Wisconsin.

Q. Infantry?

A. Infantry, under Geo. E. Bryan of Madison.

Q. And was honorably discharged?

A. Yes, sir.

Q. Where?

A. I was mustered out at Chattanooga.

Q. Have you your discharge?

A. Yes, sir; I have it at home.

I offer in evidence an authenticated copy of the order of the secretary of the interior, dated May 23rd, 1887, and request that the same be marked "Plaintiffs' Exhibit A1."

I offer in evidence an authenticated copy of the answer of the Southern Pacific Railroad Company to the order of the secretary of the interior, May 23rd, 1887, and request that the same be marked "Plaintiffs' Exhibit A2."

I offer in evidence a certified copy of the order of the secretary of the interior, August 15th, 1887, restoring to the public domain lands withdrawn for the indemnity

of parties within the thirty mile limit of the Southern Pacific Grant, and request that the same be marked "Plaintiffs' Exhibit A3."

I offer in evidence an authenticated copy of the protest of the Southern Pacific Railroad Company against the restoration of indemnity lands, dated November 16th, 1887, and request that the same be marked "Plaintiffs' Exhibit A4."

I offer in evidence a certified copy of the record of the hearing had before the register and receiver of the United States landoffice at Los Angeles, Cal., in the case of Joseph Crawford, and request that the same be marked "Plaintiffs' Exhibit A5."

I offer in evidence an exemplified copy of a letter of the commissioner of the general landoffice to the register and receiver at Los Angeles, Cal., dated June 8, 1891, and request that the same be marked "Plaintiffs' Exhibit A6."

I offer in evidence an authenticated copy of the decision of the register and receiver of the United States landoffice at Los Angeles, Cal., in the case of Joseph Crawford, and appeal of the Southern Pacific Railroad Company from said decision, and request that the same be marked "Plaintiffs' Exhibit A7."

I offer in evidence an authenticated copy of the decision of the commissioner of the general landoffice in the case of Joseph Crawford and the appeal of the Southern Pacific Railroad Company therefrom, and request that the same be marked "Plaintiffs' Exhibit A8."

I offer in evidence a certified copy of the decision of the secretary of the interior in the case of Joseph Crawford,

dated August 18, 1894, together with a copy of the demand made upon C. P. Huntington, Esq., president of the Southern Pacific Railroad Company, for a reconveyance to the United States of the northwest quarter of section 17, township 7 south, range 3 east, San Bernardino base and meridian, and request that the same be marked "Plaintiffs' Exhibit A9."

JOSEPH CRAWFORD.

State of California, }
County of Los Angeles. } ss.

I, H. S. Rollins, a notary public in and for the county of Los Angeles, State of California, do hereby certify that in pursuance of the notice hereinbefore described, and at the time and place above mentioned, I took the deposition of Joseph Crawford, a witness for the United States in the above-entitled action; that said witness was by me first cautioned and duly sworn to testify the whole truth, and the questions propounded to said witness and his answers thereto were reduced to writing by me and by no other person, and after having been first read over by said witness and corrected by him where necessary, said deposition was subscribed and sworn to before me by said Joseph Crawford on this 9th day of October, A. D. 1896.

I further certify that said witness, Joseph Crawford, lives in the county of Riverside, formerly San Diego county, California, a distance of more than one hundred miles from the city of Los Angeles, California, the place of trial of this cause.

I further certify that I am not of counsel or attorney for any or either of the parties to the above-entitled suit, nor interested in the event of the cause.

And I further certify that this deposition was retained by me in my own hands until sealed up and delivered to the clerk of the United States Circuit Court, Ninth Circuit, Southern District of California.

Witness my hand and official seal at the city of Los Angeles, California, this 9th day of October, A. D. 1896.

[Seal] H. S. ROLLINS,

Notary Public in and for Los Angeles County, California.

Plaintiffs' Exhibit "A1."

F.

H. W. H. (4-207.) M. W. J. M.

Department of the Interior.

General Landoffice,

Washington, D. C., Nov. 12, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed order and rule of the secretary of the interior of May 23, 1887, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

S. W. LAMOREUX,

Commissioner of the General Landoffice.

[Endorsed]: Plaintiffs' Exhibit A1. To deposition of Joseph Crawford. Los Angeles, Cal., Oct. 8, 1896. H. S. Rollins, Notary Public.

United States Marshal's Office,
Northern District of California.

I hereby certify that I received the annexed order on the 3d day of June, 1887, and personally served the same on the 6th day of June, 1887, on the Southern Pacific Railroad Co. main line, by delivering to and leaving with Leland Stanford, president of the Southern Pacific Railroad main line, said defendant, named therein personally, at the city and county of San Francisco in said district a true certified copy thereof, together with certified copies of the affidavits therein mentioned, certified to by ———————— attached thereto.

San Francisco, June 6, 1887.

J. C. FRANKS,
U. S. Marshal.
By B. Donnelly,
Deputy.

Department of the Interior.

Washington, May 23, 1887.

It appearing from the records of this department that orders withdrawing lands from settlement under the public land laws within the indemnity limits of the following list of land grant railroads are still existing, and that these several roads have not informed this department to what extent they are entitled to lands within such indemnity limits by reason of those lost in place of their respective grants, and that ample time has been given them to assert their rights in this behalf, namely:

Name of Road and State or Territory.	Date of Withdrawal.
State of Alabama.	
Coosa and Tennessee	June 19, 1856
Selma, Rome and Dalton	June 19, 1856
Mobile and Girard	June 19, 1856
State of Arkansas.	
St. Louis, Iron Mountain and Southern..	
State of California.	
California and Oregon	Oct. 29, 1867 Sept. 6, 1871 Feb. 18, 1885
Southern Pacific, main line	May —, 1867
Branch Line	May 10, 1871
State of Florida.	
Florida Railway and Navigation.	Sept. 6, 1856
State of Michigan.	
Marquette, Houghton and Ontonagon...	Apr. 24, 1860
State of Mississippi.	
Gulf and Ship Island	Aug. 9, 1856
State of Missouri.	
St. Louis, Iron Mountain and Southern..	

Name of Road and State or Territory.	Date of Withdrawal.
State of Oregon.	
Northern Pacific	Aug. 13, 1870 Jan. 8, 1885
Oregon and California	Jan. 31, 1870 Apr. 7, 1870 July 12, 1870 Mar. 31, 1871 July 5, 1883 July 5, 1883 July 5, 1883 Sept. 3, 1883 Oct. 27, 1883 Oct. 27, 1883 Dec. 19, 1884
Oregon Central Wagon Road	May 5, 1871 June 25, 1879
Dalles Military Wagon Road	Dec. 14, 1871
Arizona Territory.	
Atlantic and Pacific	May 17, 1872
Idaho Territory.	
Northern Pacific	Apr. 15, 1872
Montana Territory.	
Northern Pacific	Sept. 29, 1883 Oct. 8, 1883 June 8, 1883 June 9, 1883 Nov. 10, 1883 June 8, 1883 June 9, 1883 July 3, 1883 Sept. 25, 1884 Feb. 20, 1885

Name of Road and State or Territory.	Date of Withdrawal.
New Mexico Territory.	
Atlantic and Pacific	May 8, 1872
Washington Territory.	
Northern Pacific	Jan. 21, 1874 Nov. 12, 1874 Nov. 13, 1880 June 9, 1884 Sept. 1, 1884 Jan. 6, 1885 Jan. 6, 1885 Nov. 28, 1884 Nov. 28, 1884

And it now appearing that no sufficient reason exists for longer continuing in force said several orders of withdrawal, or that a time certain should be fixed within which the rights of these several roads should be asserted, and that lands to which said railroad companies are not entitled in said indemnity limits should be restored to settlement, now, rule is hereby entered on said several railroad companies to show cause on or before the 28th day of June, 1887, why said several orders of withdrawal should not be revoked, or such other action taken as shall speedily restore such lands to the public domain for settlement.

Returnable before the secretary of the interior on the 28th day of June, 1887, at 10 o'clock A. M.

L. Q. C. LAMAR,
Secretary.

[Endorsed]: Department of the Interior. L. & R. R. Div. Received June 14, 1887. 1887. 92,681-8.

Plaintiffs' Exhibit "A2."

F. M. W. J. M.

H. W. H. (4-207.)

Department of the Interior.

General Landoffice,

Washington, D. C., Nov. 12, 1895.

I, S. W. Lamoreux, commissioner of the general land-office, do hereby certify that the annexed copy of the answer of the Southern Pacific Railroad Company to the order of the * * * secretary of the interior of May 23, 1887, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the General Landoffice.

ANSWER

of the

Southern Pacific Railroad Company of California

to the

Order of the Secretary of the Interior of May 23, 1887.

Said order, addressed to this and sundry other railroad companies, is as follows:

Department of the Interior.

Washington, May 23, 1887.

It appearing from the records of this department that orders withdrawing lands from settlement under the pub-

lic land laws within the indemnity limits of the following list of land grant railroads are still existing, and that these several roads have not informed this department to what extent they are entitled to lands within such indemnity limits by reason of those lost in place of their respective grants, and that ample time has been given them to assert their rights in this behalf.

* * * * * * * * * * *

And it now appearing that no sufficient reason exists for longer continuing in force said several orders of withdrawal, or that a time certain should be fixed within which the rights of these several roads should be asserted, and that lands to which said railroad companies are not entitled in said indemnity limits should be restored to settlement, now, rule is hereby entered on said several railroad companies to show cause, on or before the 28th day of June, 1887, why said several orders of withdrawal should not be revoked or such other action taken as shall speedily restore such lands to the public domain for settlement.

Determinable before the secretary of the interior on the 28th day of June, 1887, at 10 o'clock A. M.

L. Q. C. LAMAR,
Secretary.

The most material requirement upon this company in the above is, to set forth the facts and reasons why the withdrawals of public land along its line, made to aid the final adjustment of its land grants, should not be revoked.

Passing by some of the statements in this order of 23d May, which we might except to or explain, we proceed to

make a summary of the facts and law of the case of said company, principally relating to its main line of road.

The suggestion of this order is that lands to which said company is not entitled in said indemnity limits should be restored, and the converse of this proposition may be assumed, that lands to which it is entitled should remain withdrawn.

We may be excused here for referring to the act of Congress approved March 3, 1887, public No. 162, pamphlet, p. 556, by which it is enacted "that the secretary of the interior be, and is hereby, authorized and directed to immediately adjust * * * each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted."

The grants to the Southern Pacific Railroad Company of California come within the language and intent of this enactment. The "adjustment" is made a present duty of the secretary, and we propose to show:

I.

That in order to properly perform this duty, the indemnity withdrawals for this company must be for the present maintained.

The fundamental proposition in the case is that the grant to the company is one of quantity within limits, both quantity and limits being fixed by the location of the line of road. The quantity in primary limits is the quantity of the grant, which has been only approximately ascertained.

Assuming, however, the computations of the general landoffice, as made to the department in annual and other

reports, which have been given to the public in executive documents, as a basis, it will appear that all the land within both limits, which is of the description granted, will be required to satisfy the just demands of the company.

The grant is in these words:

"There be, and is hereby, granted * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof filed in the office of the commissioner of the general landoffice, and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections," etc.

This indemnity for losses within granted limits is unusually liberal, probably because of the denial of money subsidy along a route so difficult of construction. It gives lieu lands for the lands "granted prior to said time," as

well as for those of other descriptions, for which indemnity is usually given.

The provision for indemnity covered the losses already then known to exist, as well as those to be ascertained in future under the exemptions from the grant. It covered the known loss by conflict with the prior grant and withdrawal for the Central and Western Pacific roads—twenty-five miles off one end of our road—and the State swamp grant under the act of 28th September, 1850, and the supplemental law of 22d of July, 1866; the latter act, in the minds of the land committees at the time, resulting in this allowance of indemnity for swamp lands, confirmed to the State by a prior law of the same session of Congress.

It is also true that large quantities of land along the first fifty miles of the Southern Pacific main line and along the branch line north and south of Los Angeles, had been sold and located prior to the grant, and large areas were covered by Mexican grants, so that only a small percentage of the quantity of the grant could be found opposite the completed road in those localities.

That the grant is one of quantity per mile of road is made plain by the decision of the United States Supreme Court in the case of the Burlington and Missouri River Railroad vs. The United States (98th U. S. Reps., 334.)

It will be here noticed that immediately upon the filing of our map of main line the secretary of the interior, Mr. Browning, March 19, 1867, in his letter of that date to the commissioner of the general landoffice, construed this grant as one of odd sections within twenty miles of the road, and the ten additional miles as limiting the boundaries from which the indemnity lands must be taken.

Department of the Interior.

Washington, March 19th, 1867.

Sir: Under date of January 3d, 1867, a map showing the designated route of the Southern Pacific Railroad in California, filed under the act of Congress approved July 27th, 1866, was sent to you for appropriate action.

If the withdrawal of lands has not been ordered on account of said road, you will cause the necessary instructions to be issued to the local land officers to withdraw the odd sections within the granted twenty miles on each side of said road, as shown on the map before mentioned, and also withdraw the odd sections outside of the twenty miles and within thirty miles on each side from which the indemnity for lands disposed of within the granted limits is to be taken.

* * * * * * * * * * *

The withdrawal will be ordered to take effect upon the receipt of your instructions at the local office.

Very respectfully,

Your obedient servant,

O. H. BROWNING,

Secretary.

Hon. JOS. S. WILSON,

Commissioner of the General Landoffice.

The withdrawals were ordered by the commissioner according to these directions of the secretary, under date of March 22, 1867, addressed to the local officers at San Francisco, Visalia, and Stockton.

The construction thus given to the grant in 1867 has been maintained ever since.

It has also been decided directly by the action of the secretary, upon an official report of the commissioner of the general landoffice, that our grant is one of quantity per mile, with the limitations indicated.

See the report of the commissioner of the general landoffice to the secretary, May 21, 1880 (extract appended), sanctioned by the secretary by the approval of the list therewith submitted on the 19th of July, 1880.

See also Landoffice Report, p. 27, March, 1882 (House Ex. Doc. 144, 47th Congress, 1st session, p. 28.)

In the Annual Report of the General Landoffice for 1875, at p. 409, we find the "estimated quantity embraced in the limits of the grant" on the main line of our road to be 6,000,000 acres, and the "estimated quantity which the company will receive from the grant," to be 3,750,000 acres.

The grant to the branch line road within limits is estimated (same report and page) at 3,520,000 acres, of which the company will receive 3,000,000 acres.

In the case of Cedar Rapids Railroad Company vs. Herring et al. (110 U. S. Rep. p. 27), owing to a change in legislative enactments and a change in the route of the railroad, the question of quantity became material. The plaintiff in error claimed the right to quantity along the line of original location, 345 miles; the defendants in error urged that they were entitled only on the line constructed, 271 miles long. The Supreme Court of Iowa and the United States Supreme Court unheld the conten-

tion of the defendants, and in deciding the case (p. 35) the Court say:

"It is believed that in no instance of the many grants of public lands made by Congress to aid in building railroads has the quantity been measured by any other rule than the length of the road constructed, or required to be constructed, by the grantee or its privy, and it would be the first departure from this principal known to us, if in this case Congress intended to give the same amount per mile of land for road not constructed."

If we apply this principle to the case of the Southern Pacific Railroad Company, it appears that for its grant of land per mile of road actually constructed it will be entitled to quantities as follows:

On main line, completed road, 474.42 miles. Twenty sections per mile, or 12,800 acres, amounts to 6,072,576 acres of land.

Branch line, completed, 346.96 miles of road; acquired 12,800 acres per mile, or 4,441,088 acres of land.

It is conceded by the general landoffice that the company cannot obtain more than 3,250,000 acres on its main line, and not more than 3,000,000 acres on the branch line; but we know these estimates are in excess of the true quantity liable to be taken under the grant, including, as they do, the indemnity lands. (See note at end.)

The grants were made subsequent to extensive public disposals of lands in the regions through which the roads extend.

Much land is excluded from grant and from selection, by private land claims; much by the certifications to the

State under the swamp, internal improvement, and school indemnity grants; much by reservations, sales, locations, pre-emptions, and homesteads; much by the exclusion of the mineral lands (for which, however, agricultural lands as indemnity are allowed). Indemnity is given for all these classes of lands excluded from grant, in primary limits, but lands of the same description are likewise excluded from selection outside the grant. They reduce the quantity of land liable to selection as indemnity, by a large percentage, probably one-half of the entire indemnity belt.

These figures show that the quantity of the grants is limited, not by the number of sections per mile of road, but by the lesser quantity of lands liable to the grant, to be found within the lateral limits of the road.

To the present time the company has obtained title for only 1,040,430 acres on its main line, and 187,719 acres on its branch line.

It is thus shown that there are not any lands now withdrawn for the Southern Pacific Railroad Company of California in excess of the quantity to which the company is entitled under its grants; therefore, no restoration can now be made.

II.

The indemnity lands cannot be restored to market, because:

It is the intention of the laws of the grant that the Southern Pacific Company of California, at least for its main line, should receive all the granted lands earned by building the road. There is not left to the secretary of

the interior a discretion to restore them so long as the quantity granted has not been patented to the company.

The grant is not a mere gift.

Section 18 of the act of July 27, 1866 (14 Stat. 292), is as follows:

"That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and, in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

This grant, as expressed in section 18, was made for a consideration, and not as a gift. "In consideration thereof"—that is, in consideration of the expenditure of labor and capital in building a certain connecting road of a prescribed width of gauge by one party for the benefit of the other. The labor and expenditure are by the company, and the Government secures (section 3) "the safe and speedy transportation of the mails, troops, munitions of war, and public stores" over the road at reasonable rates, uniform with those of the Atlantic and Pacific Railroad. But the consideration would be good and ample if the company was to expend, and did expend, its money, whether the Government had any benefit or not.

The company was required to accept the terms of the law and assume the undertakings therein enumerated for its performance, and this it did in due time.

"The act itself speaks the will of Congress, and this is to be ascertained from the language used. The rights of the parties rest upon a statute of the United States. Its words, as well as its reason, spirit, and intention, leave, in our opinion, no room for doubt as to its true meaning." (U. S. vs. Union Pac. R. R. Co., 91 U. S., at p. 72.)

"The purpose of Congress, above all others, was to obtain the construction of the railroad. * * * For that the grants of land were made. * * * Every other consideration was subordinate to that. And we are to give such construction to the language, if possible, as will carry out the congressional intentions." (Platt vs. Union Pac. R. R. Co., 99 U. S., at p. 60.)

This is a fair statement of the principles of interpretation applicable, and the object of Congress expressed in making our grant.

Various provisions in the law place the Government and the company in the attitude of parties to a contract, from which both are to derive benefits—on an equal footing—and each to perform the prescribed obligations to the other in good faith.

In harmony with the avowed purpose of aiding the building of the road, Congress dedicated the granted lands, and by section 6 further provided:

"That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route

shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act, but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

This section of the law, it has been settled, by decisions of the department and the United States Supreme Court, protects the granted lands against adverse appropriation.

In intention and spirit, if not in letter, it also applies to the indemnity lands. Both granted and indemnity limits are determined by the definite location of the road.

If this sixth section applies only to the granted limits, it is surplusage, for the right to the tracts in granted limits vests by the location under provisions of section 3d, without section 6.

The words in section 6, "The odd sections hereby granted," comprehend the odd-numbered indemnity sections. They are granted to the extent and amount of the land earned as fully as are those within twenty miles. Though an absolute right to particular tracts does not vest prior to the selection of them, the right so to select within ascertained limits is given by the statute.

Secretary Browning, when giving the order for withdrawal hereinbefore quoted, practically decided that the withdrawal to thirty miles was requisite and required by the terms of the grant.

Secretary Browning, and also Secretary Cox afterward, proposed to set aside the entire withdrawal on the ground that the road was not located upon the line required by its charter; but, on consideration of all the facts, Congress interposed and confirmed the location (Joint Res. of 28th June, 1870, 16 Stat. 382), and directed the secretary of the interior "to cause patents to be issued to said company for the sections of land coterminous to each constructed section (of road) reported on as aforesaid to the extent and amount granted to said company by the said act of July 27, 1866."

The "extent" relates to limits, the "amount" to quantity, and the company is to have the quantity if found within the exterior limits.

To restore any lands, therefore, whilst this duty of the secretary remains unperformed would do violence to the provisions of this law, which, in effect, said that no lands then withdrawn should be restored; the restoration which Secretary Cox had ordered (though temporarily suspended by him) should not be made so long as the lands opposite constructed roads remained unpatented.

On the 26th July, 1870, Secretary Cox advised the general landoffice that Congress had overruled his proposition to set aside the withdrawals for the Southern Pacific R. R. Co. of California. His letter is as follows:

Department of the Interior.

Washington, D. C., July 26, 1870.

Sir: Referring to my letter of the 15th of December last, directing you to suspend, until further advised by this department, all action under my decision of November 2d and 11th, 1869, ordering the restoration of lands withdrawn on account of the Southern Pacific Railroad Company of California, I have now to inform you that by a joint resolution of Congress, approved June 28th, 1870, the said company are authorized to construct their road and telegraph line, as near as may be, on the route indicated by the map filed in this department January 3, 1867, and will, upon constructing their road and telegraph line on that route, in compliance with the provisions of the act of July 27, 1866, be entitled to patents for the granted lands.

You will advise the proper local officers of this legislation that the reservation of 1867, on account of the company, may be respected.

Very respectfully,

Your obedient servant,

J. D. COX,

Secretary.

Hon. J. S. WILSON,

Commissioner of the General Landoffice.

The meaning of this is, that the withdrawals are to stand until the patents for lands earned by construction of the road have been issued "to the extent and amount" granted.

In our view, the question whether lands withdrawn for indemnity to the Southern Pacific R. R. Co. can be restored is here decided by Secretary Cox's interpretation of a statute—itself plain in its provisions—and the decision is, that the law prohibits restoration, so long as land is due for road constructed and reported on, as provided in the grant.

III.

The grant has not been adjusted so far as the road has been completed, and the principal reason for this is that the department has for six years refused to proceed with the work.

The company has made constant efforts ever since the construction and acceptance of its first sections of road to obtain patents for its granted lands, and the responsibility of delay in adjusting the grants rests with the land department, not with the company.

The act of Congress of July 1, 1864 (10 Stat. 355), required railroad companies to make selections of granted lands at the local landoffices, and to pay to the officers fees therefor. To carry the same into effect, regulations were established in January, 1867 (2nd Lester's Land Laws, p. 362), which were reissued in 1879 (Copp's Land Owner, vol. 6, p. 141).

The later regulations refer to an act of Congress of July 31, 1876 (19 Stat., 121), which requires railroad companies ("unless exempted by law from the payment of such costs") to pay the costs of surveying, selecting, and conveying lands before receiving patents therefor.

This company has paid those costs (costs for surveying paid under protest) on large quantities of land duly se-

lected according to law and the regulations, and the lists are on file in the general landoffice, the commissioner having delayed or declined patenting the same.

The aggregate of lands (June, 1887), on pending lists of selections for the main line of the road, is 511,115.42 acres; of money paid for surveys, $23,358.32; of fees of officers paid, $6,408.50; as follows:

In Granted Limits.

Acres, 315,606.71.

Amount of register's and receiver's fees paid, $3,953.50.

Amount of surveying fees paid, $14,556.82.

In Indemnity Limits.

Acres, 195,508.71.

Amount of register's and receiver's fees paid, $2,455.

Amount of surveying fees paid, $8,801.50.

In addition to these, there are lists of selections along the branch line road now pending, amounting to 232,147.85 acres.

Since the advent of the present executive administration, as attorney for the company, I have repeatedly called attention to the applications for patents pending, and requested action thereon.

May 18, 1885.—The undersigned addressed the commissioner asking patents for about 150,000 acres of selections opposite sections of road accepted by Presidents Grant and Hayes; and

October 4, 1886.—Filed a request for patents on five lists of granted lands, opposite sections of road accepted

by the President from October 1, 1872, to February 13, 1878, inclusive.

In addition to these general requests, San Francisco list No. 4, of 43,937 acres, selected July 15, 1882, of lands lying opposite road accepted in 1871 was the subject of the following communications to the general landofficee and the secretary of the interior:

October 26, 1883.—To the commissioner.

May 11, 1885.—To the commissioner.

November 21, 1885.—To the commissioner (appeal.)

December 15, 1885.—To the secretary of the interior.

March 8, 1887.—To the commissioner.

April 14, 1887.—To the secretary.

All these demands have not achieved success. In fact, the general landoffice has practically refused to execute the law of grant on the main line of the road, and applications to the secretary in the case of San Francisco list No. 4 (a test case) have so far been barren of results.

As viewed by the undersigned, the company, in asking for a patent on said list, has been demanding a legal right which the department is by law bound to concede, and not asking a concession that the secretary has a discretion to grant or refuse.

The lands hereinabove mentioned all lie opposite portions of road completed within the time prescribed in the law of grant.

As above shown, the company has invested $29,776.82 in fees and costs on lists which the Government refuses patents, and in our opinion the implication of the act of July 31, 1876, which provides that "before any lands

granted to any railroad company by the United States shall be conveyed to said company * * * there shall first be paid into the treasury of the United States for cost of surveying, selecting, and conveying said lands by the said company," is, that upon making such payments the patents shall issue.

The company is very greatly injured by the refusal to patent such lands, and is unable to perceive that there is any moral or legal obligation resting upon it to go forward and pay more money in the face of the refusal of the land department to patent the granted lands already paid for.

On the other hand, the duty of the secretary to cause such lands to be patented appears upon the face of the existing statutes applicable to the subject, viz., section 4, act July 27, 1866, 14 Stat. 292: "Patents of lands as aforesaid shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road."

Joint resolution of 28th June, 1870, 16 Stat. 382: "It shall be the duty of the secretary of the interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid to the extent and amount granted to said company by the said act of July 27, 1866," etc.

This duty is not discharged until patents have issued to the extent and amount of lands acquired by the company under its grant; and when it appears that the said "extent and amount" will require every odd-numbered

tract liable to selection that has been withdrawn from market, it is plain that the department cannot, consistently with law and morals, restore any of the withdrawn lands for the purpose of otherwise disposing of them for account of the United States treasury.

Though the duty of the department to adjust the grant and patent the lands is declared by law, recent instructions to the surveyor general of California from the general landoffice have practically stopped all surveys, and made it impossible for the company to select some of the valuable tracts within its grant which have never been surveyed.

It may be proper here to state, by way of explanation, that this company has not been derelict in stating to the department its claims.

On the 30th April, 1880, the undersigned filed a written argument in the general landoffice in support of the then pending demand for patents upon two lists of indemnity lands. The paper was submitted by the commissioner to the secretary, with a report upon the subject, dated May 21, 1880. In that paper I claimed 2,768,576 acres as earned on account of 231.92 miles of road then completed, and at that time only 950,877 acres had been patented.

In a printed brief filed by me in the department of the interior in December, 1885, the quantity of the grant for the main line road of 474½ miles completed was stated at 4,500,000 acres, of which only 1,040,430 acres had been patented.

It is therefore respectfully submitted that the com-

pany's claims have been heretofore made known to the department, and I may add that heretofore, as well as at the present time, the company has been and is ready to facilitate the settlement of its land grant, as fully and speedily as possible.

When the land department, as above shown, has not, in a period of sixteen years, administered the grant to one-third of the lands to which the company has become entitled to patents, and while it does nothing in that direction, and expresses no hope of doing anything soon, the company would have a right to complain of unfair dealing if its granted lands are not withheld from market until the department can fulfill its duties under the law. So far as indemnity selections are involved, the company under the law has an equal right to select anywhere within the prescribed limits until the grant is satisfied—the only limitation stated in the law being "not more than ten miles beyond the limits of said alternate sections," referring thus to the "ten alternate sections of land per mile on each side of said railroad"—that is, the indemnity may be selected anywhere within the 30 miles limits.

The same reasons which induced the order of Secretary Browning in withdrawing the imdemnity lands in 1867, and that of Secretary Cox of 29th July, 1870, confirming such withdrawal, are to-day applicable with the same, if not greater, force. The circumstances of the case are not materially changed—the company still has a grant by Congress, which has been but partially administered—and the United States is still in default for nonful-

fillment of the provision of section six, which enacts "that the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of road," etc.

The Government has not surveyed all the lands within the limits of 30 miles which lies opposite to our completed road, and the orders of the general landoffice have put a stop to the surveying of mountain and timber land, which, along some portions of the road, are the most valuable to the company of any lands within its limits.

A withdrawal on a line not authorized by law, or on a line of a proposed grant which was never made by Congress, may unquestionably be revoked; but, as stated in the recent exhaustive decision of the secretary in the case of the Pueblo of San Francisco, "a secretary has no power or authority to revise or reverse the final decree of his predecessor in a matter properly before him." (5 Dec. 492.)

The question of the nature of the grant and extent of the withdrawal were properly before Secretary Browning, upon direct application of the company to him, when he made the order. The question of revocation on the allegation that the withdrawal was not along the proper line of route was raised, had been argued, and was pending before Secretary Cox when Congress intervened, and, in obedience to Congress, Secretary Cox confirmed the withdrawal as ordered by his predecessor.

Since then there has been no essential change in the facts and none in the law, and there is no case before the secretary that gives him proper jurisdiction to set

aside what his predecessors have done in this matter.

The moral duty of the Government to maintain the indemnity withdrawal to its exterior limits is confidently claimed.

Respectfully submitted,

HENRY BEARD,

Atty. for So. Pac. R. R. Co. of California.

Note to Page 7.—The exact quantity of land in the granted limits for which indemnity is given has not been ascertained, and can only be obtained by an examination of the plats and tractbooks of the general landoffice. It would aid that work . nd would be actually necessary to its completion to first patent the lands to the company within primary limits that are conceded to belong to it.

Probably before the day limited (28th June) we shall be able to submit an estimate, somewhat in detail, made from an actual examination of the plats and records, that will approximate accuracy, showing the quantity of the grant and the quantity of lands within the limits thereof excepted therefrom.

APPENDIX.

Extract from Commissioner's Report Hereinbefore Referred to.

Department of the Interior.

General Landoffice,

Washington, May 21, 1880.

Hon. C. Schurz, Secretary of the Interior.

Sir: I have the honor to submit herewith for your approval or other action list No. 11 of lands in the

Visalia district, California, which were selected by the Southern Pacific Railroad Company as indemnity for lands lost to the grant. The grant was made by the act of July 27, 1866 (14 Stat. 292). The joint resolution of June 28, 1870 (16 Stat. 382), authorized the company to construct its road on the route indicated by a map filed in this office January 3, 1867.

Opposite the tracts selected from lands in the indemnity limits are designated the tracts within 20-mile limits for which the indemnity is claimed. The selected lands are all within the 30-mile limits and the lost lands in the 20-mile limits, as established upon the definite location of the line of road by construction thereof.

* * * * * * * * * * *

"I am in receipt of a communication, under date of the 30th ultimo, from Henry Beard, Esq., attorney for the Southern Pacific Railroad Company of California, claiming on behalf of that company the right to have approved to said company two lists heretofore presented to this office of lands selected by said company in lieu of lands granted, sold, etc., by the United States within the grant limits of said road prior to the date of the grant, one of which lists is made the subject of the present reference."

* * * * * * * * * * *

In the Southern Pacific case the time from whence the loss is to be determined is "prior to" the filing of the map of location. In the California and Oregon case it is "when" the original alternate sections "shall be found to have been granted, sold," etc. These phrases have the

same antecedent meaning. The words "prior to" go back just as far as the words "shall be found to have been," etc. If there is any difference, it must be in favor of the former expression.

I am of the opinion that the granting acts in the two case are precisely similar in character and extent, and in the nature and means of indemnity provided, and that both are grants of quantity, limited only by the condition that the quantity granted shall be found within a certain distance from the line of the road, and that therefore the case of the Southern Pacific road comes specifically within the rule to the California and Oregon decision heretofore referred to.

At the same time such is the importance of the case, from the magnitude of the interests, public and private, involved in the adjustment of the several grants that may be held to be covered by the California and Oregon decision, that I feel it my duty to submit to you my conclusions upon the points considered for your formal determination and instructions thereon, and I recommend the approval of the accompanying list of selections made by the Southern Pacific Railroad Company, if my views of the application to the grant to that company of the decision in the California and Oregon case be deemed correct.

Very respectfully,

Your obedient servant,

J. A. WILLIAMSON,

Commissioner.

[Endorsed]: 5749. Department of the Interior. L. & R. R. Div. Received Jun. 21, 1887. 1887. 92,681-7. A2. Plaintiffs' Exhibit A2. To deposition of Joseph Crawford, Los Angeles, Cal., Oct. 8, 1896. H. S. Rollins, Notary Public.

Plaintiffs' Exhibit "A3."

F. M. W. J. M.

H. W. H. (4-207.)

Department of the Interior.

General Landoffice,

Washington, D. C., Nov. 12, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed copy of the order of the secretary of the interior of August 15, 1887, is a true and literal exemplification of the original order on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

S. W. LAMOREUX,

Commissioner of the General Landoffice.

Compd.
A. M. S.
C. M. B. (Copy.) V. B.

Department of the Interior.

Washington, August 15, 1887.

Southern Pacific Railroad Company.

Indemnity Withdrawal.

The Commissioner of the General Landoffice.

Sir: The answer of the Southern Pacific Railroad Company to the rule of May 23, 1887, to show cause why lands withdrawn for indemnity purposes, under its grant, should not be restored to the public domain, sets up several matters in opposition to said rule.

The said company received its land grant under the act of July 27, 1866 (14 Stat. 292), the same statute which conferred a similar grant upon the Atlantic and Pacific Railroad Company, and subject to the same terms and limitations. My views expressed in relation to the indemnity withdrawals of latter company fully answer the matters set up by the Southern Pacific Railroad Company in that respect.

I have therefore to direct that as to all lands withdrawn and now held for indemnity purposes under the grant to the Southern Pacific Railroad Company, along its main and branch lines, be restored to the public domain and opened to settlement under the general land laws, except such lands as may be covered by approved selections; provided the restoration shall not affect rights acquired within the primary or granted limits of any other congressional grant.

As to lands covered by unapproved selections, applications to make filings and entries thereon may be received, noted, and held subject to the claim of the company, of which claim the applicant must be distinctly informed, and memoranda thereof entered upon his papers. Whenever such application to file or enter is presented, alleging upon sufficient prima facie showing that the land is from any cause not subject to the company's right of selection, notice thereof will be given to the proper representative of the company, which will be allowed thirty days after service of said notice within which to present objections to the allowance of such filing or entry. Should the company fail to respond or show cause before the local officers why the application should not be allowed, said application for filing or entry will be admitted, and the selection held for cancellation; but should the company appear and show cause, an investigation will be ordered under the rules of practice to determine whether said land is subject to the right of the company to make selection of same, which shall be determined by the register and receiver, subject to the right of appeal in either party.

When appeals are taken from the decision of the register and receiver to your office in the class of cases herein provided for, you will dispose of them without delay, and if the decision of your office shall be in favor of the company, and no appeal be taken, the land shall be approved or certified for patent, without requiring further action on the part of the company except the payment of fees and dues. If the decision of your office

should be adverse to the company, and no appeal be taken, the selection will be canceled, and the filing or entry allowed, subject to compliance with the law.

The order of revocation herein directed shall take effect as soon as issued, but filings and entries of the lands embraced therein shall not be received until after giving notice of the same by public advertisement for a period of thirty days; it being the intention of this order that, as against actual settlement hereafter made, the orders of the department withdrawing said lands shall no longer be an obstacle. Rights heretofore attaching, both of the company and of settlers, will be decided according to the facts in each case.

If any lists of selections have been presented by the company with tender of fees, which have been rejected and not placed on file and noted on the records of the local office, you will, if said lists are in your office or in the local office, cause said selections to be noted on the record immediately, and if such lists are not in your office or the local office, you will advise the attorney of the company that they will be allowed to file in the local office said lists of selections, and the same shall be noted on the records as of the date when first presented; provided the same be presented before the lands are opened to filings and entries.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

[Endorsed]: Plaintiffs' Exhibit A3. To deposition of Joseph Crawford, Los Angeles, Cal., Oct. 8, 1896. H. S. Rollins, Notary Public.

Plaintiffs' Exhibit "A4."

F. M. W. J. M.
H. W. H. (4-207.)

Department of the Interior.

General Landoffice,

Washington, D. C., Nov. 12, 1895.

I, S. W. Lamoreux, commissioner of the general landoffice, do hereby certify that the annexed copy of a protest by the Southern Pacific Railroad Company, and dated November 16, 1887, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

S. W. LAMOREUX,
Commissioner of General Landoffice.

Washington, D. C., November 16, 1887.

Hon. L. Q. C. Lamar, Secretary of the Interior.

Sir: In March last, the commissioner of the general landoffice recommended the restoration of sundry of the lands in California, withdrawn to await the adjustment of the grants of lands in both granted and indemnity limits of the Southern Pacific Railroad Company of California, along the lines of completed roads, both upon the main line (act July 27, 1866) and the branch line (act March 3, 1871).

On the 23d May, the honorable secretary of the interior addressed the said company, calling for any reasons it

might see fit to submit why the withdrawals of indemnity lands along its lines should not be revoked. This call was answered by a printed statement filed June 20, 1887, and upon the 27th June the honorable secretary heard oral argument upon the whole subject.

Under date of the 15th August, he made an order directing the setting aside of the withdrawals of indemnity lands and their restoration to market.

The object of this communication is to protest against any further action for the restoration of lands within granted limits.

1. Because the rights of the company to all the lands within its 20-mile limits are vested by the definite location and final completion of the roads opposite the lands mentioned in the commissioner's report of March last.

If the question be what particular tracts are granted within said limits, and what not granted, or excepted from grant, this question does not properly arise now, because there is no case before the department requiring a decision, and it is contrary to established principles of action to make decisions, when there is no case requiring it. Cases will arise in the future, because the company now claims, and I am advised will claim, every odd-numbered tract within limits, not expressly excepted from grant. What is excepted can only be determined in each particular case. This is fully recognized by the order of the 15th August.

That restoration was limited so as "not to affect rights acquired within the primary or granted limits of any other congressional grant."

That order of 15th August, as applicable to the indemnity tracts, also recognized the obligation of the department to determine separately the conflicting claims to each individual tract, where there are opposing claims.

Moreover, the final determination of the question of title under the grants has become a judicial one, because, as stated, the company's right initiated by definite location of the roads, has become vested by their completion. (97 U. S. Rep. 491; 156 U. S. Rep. 360; 112 U. S. Rep. 414; 114 U. S. Rep. 373.)

2. It has been both administratively and judicially determined that the lands of odd-numbered sections within twenty (20) miles of the roads were withdrawn by force and effect of the acts of Congress making the grants.

(See Case of Queen vs. So. Pac. R. R. Co., Copp's L. O. for April, 1876, p. 5, Decision of Secretary Delano, never overruled.)

The act of Congress of 1866, sec. 6, says said lands "shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company as provided in this act."

They are, therefore, by law withdrawn and are removed from executive restoration. Both these points are determined by the United States Circuit Court for California in the case of Orton vs. R. R. Company, 6 Sawyer's Reps. 157, where we find the following language:

"There is no provision of law requiring the secretary of the interior to issue any order withdrawing them;

the act itself has that operation by its own force. The order was doubtless proper," etc. * * *

"As there is no authority anywhere in the act for the secretary of the interior to revoke the withdrawal, or restore the lands to market, or subject them to pre-emption, his various orders are nullities, as he had no authority whatever to repeal or modify the act of Congress, expressly withdrawing these lands from pre-emption or other disposition."

These principles apply to the grant by act March 3, 1871, and are affirmed in R. R. Company vs. Dull, 10 Sawyer's Rep. 506. (See, likewise, Buttz vs. North Pac. R. R. Co., 119 U. S. Rep., p. 55.) This principle applies to the entire lines of both roads.

Surely, the executive authority cannot set aside the legitimate results of the acts of Congress, or repeal the acts.

3. The grants to the Southern Pacific Railroad Company by act of 27th July, 1866, and 3d March, 1871, are separate and distinct from each other, and from the grant to the Atlantic and Pacific Company, since forfeited as to lands in California.

As separate grants they are entitled to several adjustments.

The Atlantic and Pacific, though as respects the branch line a prior grant, having utterly failed, the grant of 3d March, 1871, to the Southern Pacific Railroad Company of California has taken full effect.

In a case recently decided by the department (5 Decisions, p. 549), the secretary held that the following words made two separate grants (16 Stat. p. 94):

"That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river, near McMinnville, in the State of Oregon," etc.

If this language gives two grants for two separate roads in Oregon, it seems to be much clearer that the grants to the Southern Pacific Company are several and independent, and entitled to full adjustment as against the United States. No prior or simultaneous grant for a road never constructed can interfere, especially after a forfeiture of such prior grant.

This communication is not intended as an argument on questions that may hereafter arise, but as a very earnest and serious protest against any further order or decision of the department to restore lands within the granted limits of either of the two roads of the Southern Pacific Railroad Company of California.

Very respectfully,

Your obedient servants,

HENRY BEARD,
JOS. K. McCAMMON,
Attys.

[Endorsed]: 10,526. Department of the Interior. L. & R. R. Div. Received Nov. 26, 1887. General Landoffice. Nov. 29, 1887. 28,900. Beard, Henry. McCammon. J. K. City. Nov. 16, '87. Protest against further action by dept. rel. to restoring lands in granted limits of S. P. R. R. A. A. G. F. 1887. 128,900-1. E. 4.

Plaintiffs' Exhibit A4. To deposition of Joseph Crawford. Los Angeles, Cal., Oct. 8, 1896. H. S. Rollins, Notary Public.

Plaintiffs' Exhibit "A5."

M. N.

F. (4-207.) S. S. M.

Department of the Interior.

General Landoffice,

Washington, D. C., August 29, 1895.

I, E. F. Best, acting commissioner of the general landoffice, do hereby certify that the annexed copy of the record of the hearing had before the register and receiver of the Los Angeles, California, land district in the case of Joseph Crawford v. S. P. R. R. Co., involving the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M., California, is a true and literal examplification of the same as it appears on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal] E. F. BEST,

Acting Commissioner of General Landoffice.

United States Landoffice.

Los Angeles, Cal., July 9, 1891.

NOTICE.

Joseph Crawford having made application to this office to make homestead entry for the N. W. ¼, sec. 17, T. 7 S.,

R. 3 E., S. B. M., alleging settlement thereon July 30, 1887, and said land having been selected by the S. P. R. R. Co. as indemnity, on Oct. 3, 1887, and a hearing having been ordered by commissioner's letter "F," January 8, 1891, it is hereby ordered that all parties in interest appear before this office on August 19, 1891, at 10 o'clock A. M., at which time a hearing will be held to determine the rights of the respective parties thereto.

W. H. SEAMANS,
Register.

[Endorsed]: Joseph Crawford vs. S. P. R. R. Co. Ordering hearing. Service accepted this 10 July, 1891. C. Cabot, Atty. for S. P. R. R. Co. Service accepted above date. F. Jordan, Atty. for Crawford.

(Affidavit.) (4-063.)

HOMESTEAD.

Landoffice at Los Angeles, Cal., Oct. 14, 1890.

I, Joseph Crawford, of San Diego Co. having filed my application No. ———, for an entry under section No. 2,289, Revised Statutes of the United States, do solemnly swear that I am a native-born citizen of the United States, over 21 years of age, and settled July 30, 1887; that said application, No. ———, is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use of any other person or persons whomsoever; and that I have not heretofore had the benefit of the homestead laws.

JOSEPH CRAWFORD.

Sworn to and subscribed this 14th day of Oct. 1890, before

I. H. POLK,
Receiver of the Landoffice.

NOTE.—If this affidavit be acknowledged before the clerk of the court, as provided for by sec. 2,294, U. S. Revised Statutes, the homestead party must expressly state herein that he or some member of his family is residing upon the land applied for, and that bona fide improvement and settlement have been made. He must also state why he is unable to appear at the landoffice.

Electros. (12614-100 M.)

[The following appears as marginal notes:]

See note, which clerks of the courts and registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them. (See directions to landofficers on duplicate receipt.)

Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared of its timber for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under section 2,461 of the Revised Statutes.

(4-102 b.)

(To be used in all entries since August 30, 1890.)

AFFIDAVIT.

U. S. Landoffice at Los Angeles, Cala.

Date, Oct. 14, 1890.

I, Joseph Crawford, of San Jacinto, Cal., applying to enter (or file for) a Hd., do solemnly swear that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character and not mineral, which, with the tracts now applied for, would make more than 320 acres, ——— for ——— settled upon by me prior to August 30, 1890. Said settlement was commenced July 30, 1887, and my improvements consisted of house, fencing, and cultivated land.

JOSEPH CRAWFORD.

(Signed plainly with full Christian name).

Sworn to and subscribed before me this 14th day of Oct., 1890, at my office in ——— County, ———.

I. H. POLK,

Receiver.

In the U. S. Landoffice
At Los Angeles, California. } 1.

In the matter of the Hd. Application of Joseph Crawford, for the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M. Selected by the S. P. R. R. Co. Oct. 3, 1887. Personally

appeared before me Joseph Crawford, who being duly sworn deposes and says: I am the homestead applicant for the above-described land, and made settlement thereon July 30, 1887, and that my improvements consist of cleared and cultivated land, fencing and house, valued at $400.00. And it is my only home and residence, and it has been my only home since settlement, and that I am a single man. JOSEPH CRAWFORD.

Subscribed and sworn to before me this 14th day of October, 1890. I. H. POLK,
Receiver.

Also appeared at the same time and place Ozro C. Tripp, who, being duly sworn, deposes and says: That the above and foregoing affidavit is true, and that he is well acquainted with all the facts set forth therein.

OZRO C. TRIPP.

Subscribed and sworn to before me this 14th day of October, 1890. I. H. POLK,
Receiver.

(4-062.)

NONMINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The nonmineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Landoffice,
Los Angeles, Cala., Oct. 14th, 1890.

Joseph Crawford, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes, and that his postoffice address is San Jacinto, California. JOSEPH CRAWFORD.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant has been satisfactorily identified before me by F. Jordan, and that I verily believe

him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Los Angeles, within the Los Angeles land district, on this 14th day of October, 1890.

I. H. POLK,
Receiver.

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States, Title LXX.

Crimes.—Chap. 4, Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See sec. 1750.)

(4-007.)

Application No.....

HOMESTEAD.

Landoffice at Los Angeles, Cala.,

Oct. 14th, 1890.

I, Joseph Crawford, of San Jacinto, California, do hereby apply to enter, under section 2289, Revised Statutes of the United States, the N. W. ¼ of section 17 in township 7 S., of range 3 E., containing ——— acres.

JOSEPH CRAWFORD.

Landoffice at ———,

———, 189—.

I, ———, register of the landoffice, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

———,

Register.

[Endorsed]: (4-007.) No. —. Homestead application, Joseph Crawford, Los Angeles, Calif., Oct. 14, 1890. Application and fees tendered and rejected on the ground that the tract applied for is within the indemnity limits of grant to S. P. R. R. Co., and selected by said company, Oct. 3, 1887. W. H. Seamans, Register. Section 17, town. 7 S., range 3 E., S. B. M.

In the Department of the Interior before the Hon. Commissioner of the Gen. Landoffice, Washington, D. C., 1.

In the Matter of the Application of Joseph Crawford to enter a homestead, the N. W. ¼, sec. 15, T. 7 S., R. 3 E., S. B. M., the same being rejected by the local office, for the reason that said land was selected by the S. P. R. R. Co., October 3, 1887.

APPEAL.

Said applicant appeals from the decision of the local office in rejecting said application, and assigns as error and exceptions thereto, to wit:

1. Error in rejecting application because said land was public land, subject to entry.

2. Because said land has not been selected as S. P.—main line—indemnity act July 27, 1866, and was excepted from primary grant to said R. R. Co. branch line, act of March 3, 1871, as it had been previously withdrawn for the Atlantic & Pacific R. R. Co's indemnity belt, and also from S. P. R. R.—main line—indemnity grant of 1866, and was then in reservation, and not "public land."

3. The appellant settled upon said land on or about July 30, 1887, two months before said land was selected by the S. P. R. R. Co.

This land is within the indemnity belt of the grant of July 27, 1866, to the A. & P. R. R. Co. It is also within the indemnity belt of the grant to the S. P. R. R. Co.—main line—grant of July 27, 1866, which was withdrawn Jan. 3, 1867, and such withdrawal and location of road confirmed by joint resolution of both houses

of Congress, June 28, 1870. It is also within the granted limits of the S. P.—branch line—grant of March 3, 1871, withdrawn April, 1871.

The A. & P. grant in California was forfeited, resumed, and restored to entry by act of Congress of July 6, 1886.

This land has not been selected at all as S. P.—main line—indemnity under act of 1866, and could not be while withdrawn for A. & P. R. R. nor S. P. R. R.—branch line—primary. It was excepted from the S. P. R. R.—branch line—primary, act of March 3, 1871:

1. Because in 1871, it was in the A. & P. indemnity, and subject to the prospective rights of that road as provided in sec. 23 of the grant of March 3, 1871. (See Gordon vs. S. P. R. R. Co., 5 L. D. 691, and Coble vs. Same.)

2. It was excepted from S. P. R. R. Co—branch line—primary grant: Because it was previously and on Jan. 3, 1867, withdrawn for S. P. R. R.—main line—indemnity. When the grant attached in 1871, it was not public land, but was a reservation. (See above cases. Leavenworth R. R. Co. vs. U. S., 2 Otto; Newhall vs. Sanger, Id.; Wolcott vs. Des Moines, 5 Wall. 681; Woolsey vs. Chapman, 101 U. S. 755.)

For these reasons the land is subject to entry, and the entry should be allowed.

Los Angeles, California, November 1st, 1890.

Respectfully submitted,

J. JORDAN,

Atty. for Crawford, Claimant.

[Endorsed]: Joseph Crawford, Appeal. Hd. Application, N. W. ¼, sec. 17, T. 7 S., 3 E., S. B. M. Rejected for

reason of grant to S. P. R. R. Co. Filed Nov. 1, 1890. I. H. Polk, Receiver. F. Jordan, Los Angeles, Cala., Atty. for Crawford. 1890. 151642—2.

In U. S. Landoffice,

Los Angeles, Cal., Aug. 19, 1891.

In Matter of Hearing Ordered by Commissioner's letter "F" of Jany. 8, 1891, between Joseph Crawford and S. P. R. R. Co., involving N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M.

Appearances:

For Crawford, F. Jordan, Esq.

For S. P. R. R. Co., C. Cabot, Esq.

S. P. R. R. Co. moves to dismiss the application of Jos. Crawford to enter the land in controversy on the ground that said land was granted to S. P. R. R. Co. by act of Congress, approved March 3, 1871, and that in accordance with the provisions of said act of Congress, said land was withdrawn from entry by order of the secretary of the interior, dated April 3, 1871, and that thereafter, to wit, on Oct. 3, 1887, the said S. P. R. R. Co., under the provisions of said act of Congress, did select all of said sec. 17, as indemnity for all of sec. 3, T. 1 S., R. 11 W., S. B. M., by list No. 25 of lands selected by S. P. R. R. indemnity limits, branch line, and duly paid the fees prescribed for filing said list, and that said list was duly allowed and approved by R. & R., U. S. landoffice, on Oct. 3, 1887, and in support of said motion refers to decision of U. S. Supreme Court in case of St. Paul & Pa-

cific R. R. vs. N. P. R. R., decided March 2, 1891, 139 U. S., p. 1.

Motion objected to, for the reason that claimant Crawford in his homestead application herewith swears to settlement July 30, 1887, over 2 months before the land in controversy was selected by the S. P. R. R. Co. And further that the present hearing was ordered by the commissioner with a full knowledge of all the facts, "F," Jany. 8, 1891. And further that by departmental order of Aug. 15, 1887, the indemnity withdrawal for the benefit of said company, was revoked, and the unselected lands covered thereby were restored to the public domain and opened to settlement under the general land laws.

In reply to the above objection the S. P. R. R. Co. desires to call attention to that portion of the decision of the U. S. Supreme Court above referred to in which said Court holds as follows: "They were therefore excepted by that legislation from grants, independently of the withdrawal by the secretary ———— interior. His action informally announcing their withdrawal was only giving publicity to what the law itself declared."

Consequently the secretary of the interior had no authority to revoke said withdrawal, not having been authorized by any act of Congress to do so.

Exception to the immediate foregoing by Crawford, for the reason that the office of the secretary of the interior is the court of last resort in all matters pertaining to the public domain.

JOSEPH CRAWFORD, homestead claimant, called in his own behalf:

Q. When did you make settlement upon the land in controversy? A. In July, 1887.

Q. What are your improvements valued at which you now have upon it?

A. They ought to be worth $400.00.

Q. Of what do your improvements consist?

A. A house, fencing. I have grubbed over 100 acres on it, and I have cultivated and planted over 15 acres to wheat and barley every year since I took it up.

Q. Have you any other home or residence?

A. No, sir.

Q. Have you any crop on the land at present, and if so how many acres, and what is its value?

A. Yes. I have 15 acres of *propo* wheat. I do not know its value.

Cross-Examination.

Q. When you settled upon the land did you know that the land was reserved from entry for the benefit of the S. P. R. R. Co.? A. No, sir.

Q. Did you ever make any application to buy the land from the S. P. R. R. Co.? A. Yes; I did.

Q. When did you make that application?

A. I can't give the date?

Q. Was it not on July 25, 1887?

A. I don't remember. I couldn't say. I have the application at home. I had been on the land some time before I made it.

Q. Did you not receive a notice from the S. P. R. R.

Co., dated Sept. 9, 1889, citing you to appear at the office of C. Cabot on Oct. 9, 1889, at 11 A. M. to present your claim to the right to purchase all of said sec. 17, under your application dated July 25, 1887, and notifying you of the price of said land? A. Yes, sir.

Q. Did you not also at the same time make application to S. P. R. R. Co. on the same day to purchase S. ½ of sec. 7 in the same township? A. Yes, sir.

Q. And did you not also receive a similar notice to appear before C. Cabot on Oct. 9, 1889, to present your claim to said land?

A. Yes; the same notice covered both pieces.

Q. Was not at the time you made both those applications O. C. Tripp interested with you in the purchase of both those tracts of land?

A. Yes, sir.

Q. Did he own any portion of the improvements or have any interest in the cultivation of said land?

A. No, sir.

Q. Did O. C. Tripp pay any portion of the expense in clearing this land? A. No, sir.

Q. What interest did Tripp have in those applications?

(Objected to unless the inquiries are directed to the land actually in contest—i. e., N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M.)

A. He wanted a piece of sec. 17—the E. ½ of it.

Q. Was that application made by him and you with that understanding?

A. That is the way we talked it, but that was after I took up my homestead.

Q. Do you recollect presenting to the U. S. landoffice, on Oct. 7, 1887, an application to make homestead entry for N. W. ¼, sec. 17?

A. I made an application for it, I don't remember when.

(Attorney for Crawford admits the record.)

(In connection with that answer S. P. R. R. Co. offers in evidence, tract book of Twp. 7 S., R. 3 E., to show what the record is, viz: "Homestead application N. W. ¼, Joseph Crawford, Oct. 7, 1887, withdrawn.")

Q. Do you know when that application was withdrawn?

A. I don't remember. It was when Mr. Bethune was register.

(S. P. R. R. Co., in connection with the foregoing answers, also offers tract-book to show that Jos. Crawford made a second application to file on the same tract, Oct. 14, 1890, being the application on which the present hearing was ordered.)

Q. Did you ever appeal to the commissioner general landoffice from action of R. & R. in refusing to accept and file the application to make homestead entry for the land in controversy presented by you Oct. 7, 1887, or take any action in the matter other than to withdraw said application.

A. No; I took no action.

JOS. CRAWFORD.

Subscribed and sworn to before me this Aug. 19, 1891.

G. W. BRYANT.

Receiver.

OZRO C. TRIPP, witness for Crawford.

Q. Are you acquainted with the land in controversy, and, if so, how long have you known it?

A. Yes; I have known it 10 years.

Q. How far do you live from it, and when did you last see it?

A. Five miles. I last saw it ten days ago.

Q. State if you know when the claimant settled upon it; his improvements and their value.

A. About June, 1887. His improvements are worth about $400.00, and consist of house, fencing, clearing of brush, and plowing and breaking land.

Q. How many seasons has he raised crops on it, if you know?

A. About 3 seasons. He has a crop of 10 or 15 acres of wheat on the land now.

Q. Has he any other home or residence?

A. No, sir.

Cross-Examination.

Q. Was the application to purchase all of section 17 made to S. P. R. R. Co. by yourself and Jos. Crawford to S. P. R. R. Co. in 1887, made with your consent?

A. Yes, sir.

Q. Do you know Jno. E. Jackson, grading agent of S. P. R. R. Co.? A. Yes, sir.

Q. Did you see him at the time he appraised sec. 17?

A. Yes, sir.

Q. Did you have any conversation with him in regard to this sec. 17?

A. Yes, sir. I told him we would buy it if they would sell it cheap enough.

Q. Do you recollect when he was there?

A. Yes. About 2 years ago.

Q. In Mr. Jackson's report to the R. R. Co. he reported as follows: "Small house and some cultivation on N. W. ¼ by Tripp and Crawford"; is not that correct?

A. No, sir.

(Motion to strike out, as the statement of grading agent was not made under oath.)

Q. Is it not a fact that at the time Mr. Jackson, the grading agent, was there, you and Crawford were jointly interested in this land?

A. No, sir; not in that quarter.

Q. Were you jointly interested in any part of section 17?

(Objection as immaterial.)

A. Yes, sir; the E. ½.

Q. Is it not a fact that you requested Jno. E. Jackson to make application to S. P. R. R. Co. in the name of yourself and Joseph Crawford for all of section 17?

A. Yes, sir.

Q. And is not that the application under which you and Joseph Crawford were cited to appear before C. Cabot at Los Angeles, Oct. 9, 1889, to present your claim for your right to purchase under your application?

A. Yes.

Q. Are you and Crawford jointly interested in the cattle business? A. No.

Q. Are you engaged in the cattle business?

A. Yes.

Q. Is Crawford also engaged in the cattle business?

A. No, sir.

Q. Have your cattle been grazing for the last 4 years over section 17?

A. No, sir; they would be if there was water there.

Q. Have they never grazed over any portion of section 17? A. Yes, sir.

Q. On the N. W. ¼ as well as the other portions?

A. Yes; they have passed through there.

Q. Are you related to Mr. Crawford or connected with him by marriage? A. No, sir.

Q. You also joined Mr. Crawford in an application for S. ½ of section 7, did you not, to the S. P. R. R. Co.?

A. Yes, sir. O. C. TRIPP.

Subscribed and sworn to before me this August 19, 1891. G. W. BRYANT,

Receiver.

JOSEPH CRAWFORD, recalled for further cross-examination.

Q. Have you in your possession the acknowledgment by the land agent of the S. P. R. R. Co. of your individual application to purchase section 17, and also the acknowledgment of the application of O. C. Tripp and yourself to purchase the same land?

A. I don't know whether I have it now or not. I did have it.

Q. Have you in your possession the notice sent to you by Jerome Madden, land agent S. P. R. R. Co., and also to Tripp and Joseph Crawford, sent by said Madden, notifying you that section 17 would be for sale on October 9, 1889, and the price of the same?

A. I got a notice, bu I think only one for Tripp and myself.

Q. Where is that notice?

A. I don't know where it is.

Q. Did you give it to Mr. Tripp?

A. I don't know whether I did or not. I don't know what I did with it.

(Witness is called upon by the S. P. R. R. Co. to search among his papers and produce in evidence the acknowledgment of the receipt by Jerome Madden, land agent S. P. R. R. Co., of the application made by O. C. Tripp and Jos. Crawford to S. P. R. R. Co. to purchase section 17, T. 7 S., R. 3 E., S. B. M., and also the notification sent to Joseph Crawford and O. C. Tripp and Joseph Crawford, or either of them, notifying them that the land would be for sale on October 9, 1889.

(Objection that the tribunal before which this case is being heard has not the power to issue a writ of duces tecum, and claimant denies all present knowledge of the papers.)

A. I can't produce them; I don't know what I did with them. I couldn't pay that price for the land.

Q. Will you swear that you know they are lost?

A. I will swear that I don't know where they are.

(Question repeated and witness instructed to give a direct answer to it.)

A. Yes.

JOS. CRAWFORD.

Subscribed and sworn to before me this Aug. 19, 1891.

G. W. BRYANT,
Receiver.

OZRO C. TRIPP, recalled for further cross-examination.

Q. Have you in your possession the acknowledgment by Jerome Madden of the application by yourself and Jos. Crawford to purchase section 17, T. 7 S., R. 3 E., S. B. M.? A. I think I have.

Q. Have you it here now? If so produce it.

A. No, sir.

Q. Have you also in your possession the notice sent you by Jerome Madden, land agent S. P. R. R. Co., notifying you that section 17 would be for sale on October 9, 1889, and the price of the same?

A. I think I have.

(S. P. R. R. Co. now asks for a continuance of the case to such time as may seem proper to register and receiver to enable witness to produce in evidence the papers he acknowledges to have in his possession, and calls upon the witness to produce them at the time designated by register and receiver. Same objection as before.)

O. C. TRIPP.

Subscribed and sworn to before me this Aug. 19, 1891.

G. W. BRYANT,
Receiver.

(Attorney for Crawford admits that said papers were received, and that Tripp is unable to produce them, as they have been lost, mislaid, or destroyed, and further, that a certified copy thereof may be admitted.)

(Motion withdrawn.)

WILLIAM B. TRIPP, witness for claimant Joseph Crawford.

Q. How long have you been acquainted with the land in controversy? A. About 13 years.

Q. State when he settled there.

A. In June or July, 1887.

Q. State what improvements he has there, if you know.

A. He has a house, fencing, land cleared and plowed; worth about $150 or 200.00.

Q. How many seasons has he raised crops on it, and how many acres in crop this year?

A. Four seasons. He has 10 acres in wheat this year.

Q. Has he any other home that you know?

A. No.

Cross-examination waived.

W. B. TRIPP.

Subscribed and sworn to before me this Aug. 19, 1891.

G. W. BRYANT,
Receiver.

Continued to Aug. 20, 1891, 9 A. M.

JOHN E. JACKSON called on behalf of S. P. R. R. Co.

Q. Are you the grading agent of the S. P. R. R. Co.?

A. Yes.

Q. Did you receive instructions from the company to grade section 17, T. 7 S., R. 3 E., S. B. M.? A. Yes.

Q. When you appraised it, who did you find there?

A. When I appraised it July 7, 1889, Ozro Tripp was along with me. He pointed out a small shanty on the N. W. ¼; it appeared to me to be somewhat near the line between the N. W. ¼ and S. W. ¼, and said the improvements belonged to him and Mr. Crawford together, and from the conversation I had with him the object of the improvements was to give them an equitable right to purchase from the S. P. R. R. Co. He never mentioned that there was any adverse claim on the part of Mr. Crawford.

Q. Is the Ozro Tripp you have just referred to the same person who is present in this room as a witness for Crawofrd? A. He is the same person.

Q. Did you see Crawford on the land at that time, or at any time?

A. I did not see Crawford on the land at that time, and never saw him there.

Q. You have been on the land oftener than once?

A. Yes, sir.

Cross-examination waived.

JOHN E. JACKSON.

Subscribed and sworn to before me this August 20, 1891.

G. W. BRYANT,
Receiver.

Motion to strike out as irrelevant, incompetent, and immaterial, and having nothing whatever to do with the

homestead entry of Crawford which was filled prior to the selection of the land in controversy by the R. R. Co.

Case closed.

Testimony in this case.....$29.34
Words, @ 22½c.....$6.60
Crawford, 824 words $1.85
S. P. R. R. 2,110 words.....$4.75

Paid in full, Aug. 20, 1891.

G. W. BRYANT,
Receiver.

[Endorsed]: A5. Plaintiffs' Exhibit A5. To deposition of Joseph Crawford, Los Angeles, Cal., Oct. 8th, 1896. H. S. Rollins, Notary Public.

Plaintiffs' Exhibit "A6."

M. N. (4-207a.) S. S. M.

Department of the Interior.

General Landoffice,

Washington, D. C., August 29, 1895.

I, E. F. Best, acting commissioner of the general land-office, do hereby certify that the annexed copy of a letter addressed to the register and receiver, at Los Angeles, authorizing a hearing in the case of Joseph Crawford v. Southern Pacific R. R. Co., involving the N. W. ¼, sec. 17, 7. 7 S., R. 3 E., S. B. M., California, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] E. F. BEST,

Acting Commissioner of General Landoffice.

F. M. N.

151642—'90. Vol. F. 314A., p. 223. W. C. E.

Department of the Interior.

General Landoffice,

Washington, D. C., January 8, 1891.

Register and Receiver, Los Angeles, Cal.

Sirs: With letter of December 10, 1890, there was transmitted the application of Joseph Crawford to make homestead entry for the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M., together with his appeal from your objection thereof.

The land described is within the limits of the indemnity withdrawal made May 10, 1871, for the benefit of the Southern Pacific R. R. Co.—branch line—under the act of March 3, 1871, and it was selected thereby October 3, 1887, on account of which you rejected Mr. Crawford's application.

By departmental order of August 15, 1887, the indemnity withdrawal for the benefit of said company was revoked, and the unselected lands covered thereby were restored to the public domain and opened to settlement under the general land laws.

Accompanying Mr. Crawford's application is his affidavit corroborated, alleging settlement on said land July 30, 1887, and continuous residence thereon since said date. He has, accordingly, made sufficient prima facie showing that the land was not subject to selection by the company on October 3, 1887, to warrant you in calling upon the company to show cause, if any there be, why Crawford's application should not be allowed, in accordance with the directions contained in office circular of September 6, 1887.

The papers transmitted with your said letter are, accordingly, herewith returned for proper action.

You will so advise the applicant, and in due time report proceedings.

A copy of said office circular is also herewith enclosed.

Respectfully,

LEWIS A. GROFF,

Commissioner.

[Endorsed]: A6. Plaintiff's Exhibit A6. To deposition of Joseph Crawford. Los Angeles, Cal., Oct. 8th, 1896. H. S. Rollins, Notary Public.

Plaintiffs' Exhibit "A7."

M. N. (4-207a.) S. S. M.

F. Department of the Interior.

General Landoffice.

Washington, D. C., August 29, 1895.

I, E. F. Best, acting commissioner of the general land office, do hereby certify that the annexed copy of the deci-

sion of the register and receiver of the Los Angeles land district, made in the case of Joseph Crawford vs. S. P. R. R. Co., involving the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M. California, and of the company's appeal from said decision, are true and literal exemplifications of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal]

E. F. BEST,
Acting Commissioner of General Landoffice.

United States Landoffice,
Los Angeles, Cal., May 5, 1892.

JOSEPH CRAWFORD
vs.
S. P. R. R. Co.

Involving the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M.

Crawford made application October 10, 1890, to enter the above-described land under the homestead act, alleging settlement thereon July 30, 1887.

The application was rejected by this office for the reason that the land had been selected by the S. P. R. R. Co. Oct. 3, 1887. An appeal was taken, and the honorable commissioner, by letter "F" dated January 8, 1891, instructed this office as follows:

"Accompanying Mr. Crawford's application is his affidavit corroborated, alleging settlement on said land July 30, 1887, and continuous residence thereon since said date.

He has, accordingly, made sufficient prima facie showing that the land was not subject to selection by the company on October 3, 1887, to warrant you in calling upon the company to show cause, if any there be, why Crawford's application should not be allowed in accordance with the directions contained in office circular of September 6, 1887."

A hearing was ordered by this office, and set for August 19, 1891, when the parties in interest were present.

The testimony taken at the hearing shows that Crawford made settlement on the land in July, 1887, and has resided thereon and cultivated the same continuously to the date of this hearing.

There is no testimony on the part of the S. P. R. R. Co. to controvert this; we are therefore of the opinion that according to the instructions contained in circular of September 6, 1887, and the rulings in numerous decisions of the department, the land was not subject to selection by the company on October 3, 1887, and we recommend that the application of Crawford to enter the land as a homestead be allowed.

W. H. SEAMANS,
Register.

G. W. BRYANT,
Receiver.

[Endorsed]: U. S. Landoffice, Los Angeles, Cal., May 5, 1892. Joseph Crawford vs. S. P. R. R. Co. Decision of Register and Receiver. 9—8729. Service of within accepted this May 11, 1892. F. Jordan, Atty. for Crawford. C. Cabot, Atty. for S. P. R. R. Co.

In the United States Landoffice.
Los Angeles, Cal.

JOSEPH CRAWFORD
vs.
S. P. R. R. Co.

The Southern Pacific Railroad Company hereby appeals to the honorable commissioner of the general land-office from the decision rendered by the register and receiver in the above-entitled case, and specifies as error:

I.

Said decision is contrary to law and the evidence.

II.

The register and receiver erred in recommending that the homestead application of Crawford be allowed.

III.

The register and receiver erred in finding that the land was not subject to selection by the Southern Pacific Railroad Company by reason of the settlement of Crawford upon the land.

IV.

The register and receiver erred in not finding that the grant to the Southern Pacific Railroad Company was one of quantity, and that the indemnity lands as well as the lands in place were granted, and consequently not subject to sale or disposal except by said Southern Pacific Railroad Company.

V.

The register and receiver erred in not finding that Crawford never made any settlement upon the land with the intention of claiming the same under any of the land laws of the United States, but that his settlement was made for the purpose of acquiring the preference right of purchase from said Southern Pacific Railroad Company as an actual settler under their rules.

VI.

The register and receiver erred in not finding that said settlement of Crawford was not made in good faith, and that it was made at the instigation of and in the interest of Tripp, who used said Crawford and induced him to settle upon said land for the purpose of securing the land for himself, the said Tripp.

VII.

The register and receiver erred in not finding that a prior application to make homestead entry of said tract by said Crawford had been rejected by said register and receiver, and that the failure of said Crawford to appeal from said rejection forfeited any right he may have had to enter said land under the homestead laws, as against the selection of said land by said Southern Pacific Railroad Company, which was made prior to his said application, and became valid by reason of his failure to appeal from the said rejection.

C. CABOT,
Atty. for S. P. R. R. Co.

[Endorsed]: A7. In the U. S. Landoffice, Los Angeles, Cal. 9—8729. Joseph Crawford vs. S. P. R. R. Co.

Appeal. Service of copy accepted this 27th day of May, 1892. F. Jordan, Atty. for Crawford. C. Cabot, Atty. for S. P. R. R. Co. Filed May 27, 1892. W. H. Seamans, Register. Plaintiff's Exhibit A7. To deposition of Joseph Crawford, Los Angeles, Cal., Oct. 8, 1896. H. S. Rollins, Notary Public.

Plaintiffs' Exhibit "A8."

M. N. (4-207a.) S. S. M.

F. Department of the Interior.

General Landoffice,

Washington, D. C., August 29, 1895.

I, E. F. Best, acting commissioner of the general landoffice, do hereby certify that the annexed copy of the decision of this office made in the case of Joseph Crawford vs. S. P. R. R. Co., involving the N. W. ¼, sec. 17, T. 7 S., R. 3 E., S. B. M., California, and of the appeal of the company therefrom, are true and literal exemplifications of the originals of record and on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] E. F. BEST,

Acting Commissioner of General Landoffice.